newsletter on intellectual freedom

IFC ALA

Editor: Henry Reichman, California State University, East Bay
Founding Editor: Judith F. Krug (1940–2009)
Publisher: Barbara Jones
Office for Intellectual Freedom, American Library Association

ISSN 0028-9485

January 2011 ☐ Vol. LX ☐ No. 1 ☐ www.ala.org/nif

increase reported in Canadian library book challenges

The following is the text of the Annual Report of the 2009 Survey of censorship conducted by the Canadian Library Association's Advisory Committee on Intellectual Freedom, submitted in September 2010.

The most challenged author reported in the annual survey of Canadian libraries in 2009 was Charlaine Harris for her series of ten adult novels entitled *The Southern Vampire Mysteries*. The entire series was reported on four separate occasions within the same library system. Two other series were each challenged once, *Negima! Magister Negi Magi*, by Ken Akamatsu, a manga series of 29 titles known in Japan as *Magical Teacher Negima*!, and *Gossip Girl*, by Cecily von Ziegesar, a young adult novel series of 15 titles that became the 2007 inspiration for the "Gossip Girl" teen drama television series.

Only three individual titles were reported twice on the 2009 survey, a teen comedy film "Fired Up!" directed by Will Gluck, a children's picture book *Mummy Laid an Egg!* by Babette Cole, and *NOW Magazine*. The children's picture book *And Tango Makes Three* was again challenged in 2009, making it the only title to appear on the survey every year since it began in 2006.

Altogether, 139 challenges were reported in the 2009 survey conducted annually by the CLA Advisory Committee on Intellectual Freedom. Of these, 137 were to library resources and two were to library policies.

With so many challenges attributed to entire series of printed fiction in 2009, it is no surprise that books in general accounted for 83% of all formats challenged, while 10% were DVDs and videos and 4% were magazines. The most frequent reasons for challenges to library resources were sexually explicit at 76%, age inappropriate 68%, offensive language 34%, violence 32%, nudity 28%, sex education 5%, racism 4%, and inaccuracy 4%. Multiple reasons for a challenge were common.

Two-thirds of all challenges occurred in public libraries in 2009, while school libraries reported 34% and academic libraries the remaining 2%. Teaching assistants were responsible for one-third of all challenges, patrons for 30%, parents and guardians for 20%, and library staff for 15%. Library materials were retained in 41% of the 2009 challenges, relocated or reclassified in 32% of cases, and removed in 25%.

Also reported in 2009 were two challenges to library policies. One challenge was to a music collection policy of acquiring CDs with "clean" rather than original lyrics, that is, excluding CDs with "parental advisory" labels. The other challenge was to

(continued on page 3)

Published by the ALA Intellectual Freedom Committee, Martin Garnar, Chair

in this issue

targets of the censor

READ BANNED BOOKS

(ISSN 0028-9485)

Newsletter on Intellectual Freedom is published bimonthly (Jan., Mar., May, July, Sept., Nov.) by the American Library Association, 50 E. Huron St., Chicago, IL 60611. The newsletter is also available online at www.ala.org/nif. Subscriptions: $70 per year (print), which includes annual index; $50 per year (electronic); and $85 per year (both print and electronic). For multiple subscriptions to the same address, and for back issues, please contact the Office for Intellectual Freedom at 800-545-2433, ext. 4223 or oif@ala.org. Editorial mail should be addressed to the Office of Intellectual Freedom, 50 E. Huron St., Chicago, Illinois 60611. Periodical postage paid at Chicago, IL and at additional mailing offices. POSTMASTER: send address changes to Newsletter on Intellectual Freedom, 50 E. Huron St., Chicago, IL 60611.

a weeding policy of withdrawing books that had not circulated in ten years or more regardless of their status as presumed "classics."

Findings of the 2009 survey show that challenges continue to occur in publicly funded Canadian libraries, clear evidence that attention to intellectual freedom remains central to the work of Canadian librarians and sister association advocates across the cultural network. CLA President Keith Walker notes: "Libraries play a crucial role in the protection of intellectual freedom and have to be prepared to support the right of Canadians to read what they choose. Freedom to read can never be taken for granted."

Indeed, in recognizing that participation in the survey is strictly voluntary, the survey authors are keenly aware that far more challenges go unreported than are documented here, so consequently these data should be treated as indicative rather than definitive; they do not accurately capture the overall climate of intellectual freedom in publicly funded Canadian libraries.

In 2006, the CLA Advisory Committee on Intellectual Freedom initiated an annual Challenges Survey to gather data about the nature and outcome of challenges to library materials and policies experienced by publicly funded libraries across Canada in each calendar year. Data from the survey help to inform the Committee's policy and advocacy work and results are shared with the CLA membership, other library workers and advocates, the Freedom of Expression Committee of the Book and Periodical Council, and the Office for Intellectual Freedom of the American Library Association. The survey has been enhanced each year; for the first time the 2009 version was made available in both official languages. A driving aim of the survey project is to encourage library documentation, reporting, and transparency about challenges to materials and policies.

With the four years 2006-2009 of survey data now available, the Committee is devoting energy to comparing results and identifying trends. The chart below lists the number of challenges described by publicly funded Canadian libraries in each of the four survey years.

Survey year	2006	2007	2008	2009
Challenges reported	31	45	78	139

Total challenges in 2009 represented a significant increase over previous years because several large series of novels were reported that year. For the same reason, challenges to books were substantially higher in 2009 than before, while those to DVDs and videos were lower and those to sound recordings were about the same. The proportion of challenges reported in public libraries in 2009 was the lowest of the four years. Challenges reported by school libraries in 2009 were the highest of the four years, and of particular note was the new phenomenon of teaching assistants, who initiated one-third of all 2009 challenges. Patron challenges were lower than in 2008, but about the same as for 2007. Parents and guardians initiated challenges in the same proportion as in 2008, while library staff members were responsible for more challenges in 2009 than in 2008.

The proportion of challenges on the basis of sexually explicit content was much higher in 2009, a marked trend upwards, and the same was true for "age inappropriate" materials. Challenges for offensive language were higher than in 2008, but about the same as in 2007. Challenges for violence were also higher than in 2008, but similar to 2006. Challenges for nudity were higher than in previous years.

Data over the four years appear to show a downward trend in materials retained, with more materials being reclassified and relocated from one area of the collection to another, e.g., from young adult to adult, as well as more materials being removed from library collections. There were higher levels of adult novels and young adult graphic novels challenged in 2009. Non-fiction challenges were about the same over the four years, as were picture books and young adult novels.

For more information about the annual Challenges Survey, please contact the CLA Advisory Committee on Intellectual Freedom at www.cla.ca or for the 2009 survey, Dr Alvin M Schrader, CLA IFC Convenor, at alvin.schrader@ualberta.ca. □

report shows broadband adoption rises while 'gap' persists

The Department of Commerce's Economics and Statistics Administration (ESA) and National Telecommunications and Information Administration (NTIA) on November 8 released a new report, "Digital Nation II," that analyzes broadband Internet access and adoption across the United States. The study – the most comprehensive of its kind —finds that socio-economic factors such as income and education levels, although strongly associated with broadband Internet use, are not the sole determinants of use; even after accounting for socioeconomic differences, significant gaps persist along racial, ethnic, and geographic lines.

The report analyzes data collected through an Internet Usage Survey of 54,000 households conducted by the U.S. Census Bureau in October 2009. Earlier this year, NTIA released initial findings from the survey, showing that while virtually all demographic groups have experienced rising broadband Internet adoption at home, and 64 percent of households overall have broadband at home, historic disparities among demographic groups have persisted over time.

"In order to narrow the digital divide and help more Americans compete in the 21st century economy, we

need to better understand the causes of the broadband gap," said Under Secretary for Economic Affairs Rebecca Blank. "Today's report identifies various factors that drive and inhibit broadband adoption. It is the most comprehensive, data-driven analysis of broadband adoption that has been conducted. The bedrock of sound policymaking is statistical measurement and analysis of the data and underlying issues."

"Americans who lack broadband Internet access are cut off from many educational and employment opportunities," said Assistant Secretary for Communications and Information and NTIA Administrator Lawrence E. Strickling. "The learning from today's report is that there is no simple 'one size fits all' solution to closing the digital divide. A combination of approaches makes sense, including targeted outreach programs to rural and minority populations emphasizing the benefits of broadband. NTIA's Broadband Technology Opportunities Program is helping to address this challenge, but we are hopeful today's report will be useful to the larger community working to close the gap."

The principal findings of the report are:

- Seven out of ten American households used the Internet in 2009. The majority of these households used broadband to access the Internet at home. Almost one-fourth of all households, however, did not have an Internet user.

- Income and education are strongly associated with broadband Internet use at home but are not the sole determinants.

- Broadband Internet adoption was higher among White households than among Black and Hispanic households. Differences in socio-economic attributes do not explain the entire gap associated with race and ethnicity.

- A similar pattern holds for urban and rural locations. Urban residents were more likely than their rural counterparts to adopt broadband Internet, even after accounting for socio-economic differences.

- In contrast, differences in socio-economic and geographic characteristics do explain a substantial portion of the broadband adoption lag among people with disabilities.

- Broadband adoption also varies with age, with the elderly population much less likely than their younger counterparts to use home broadband Internet services.

- Lack of need or interest, lack of affordability, lack of an adequate computer, and lack of availability were all stated as the main reasons for not having home broadband Internet access. The significance of these factors, however, varied across non-users, with affordability and demand generally dominating.

- Internet non-users reported lack of need or interest as their primary reason for not having broadband at home. This group accounted for two-thirds of those who don't have broadband at home. In contrast, households that did not use the Internet specifically at home but did use the Internet elsewhere ranked affordability as the primary deterrent to home broadband adoption. This group represented almost one-fourth of those who don't have broadband at home.

- Households that use dial-up service cited affordability as the main reason for not adopting broadband at home. For rural residents using dial-up service, lack of broadband availability was reported as a significant factor.

- Between 2001 and 2009, broadband Internet use among households rose sevenfold, from 9 percent to 64 percent of American households.

- Some of the demographic groups that had lower-than-average adoption rates in 2001 have since shown impressive gains, but sizable gaps remain among demographic groups defined by income, education, race, and ethnicity. Similarly, despite gains in adoption rates within geographic areas, significant gaps in adoption still persist among the states, some regions, and between urban and rural locations.

NTIA and the Department of Agriculture's Rural Utilities Service are administering a nearly $7 billion Recovery Act initiative to expand access to and adoption of broadband services. NTIA is utilizing approximately $4 billion of that funding for the Broadband Technology Opportunities Program (BTOP), which provided grants to support the deployment of broadband infrastructure, enhance and expand public computer centers, and encourage sustainable adoption of broadband service.

The full report is available at http://www.esa.doc.gov/DN/. Reported in: http://www.ntia.doc.gov. □

Chinese funded centers at U.S. colleges prompt academic freedom concerns

A little bit of China can be found on the University of Maryland's main campus, tucked away in the basement of Holzapfel Hall. There, in Room 0134, sits the

university's Confucius Institute, where the walls are draped with Chinese etchings and calligraphy, scenes from the Beijing Opera play out on a large computer screen, and people sit around a table learning Mandarin.

The institute focuses on teaching Chinese language and culture. But it also wants students to feel good about China as a nation. Like the sixty other Confucius Institutes that have cropped up at colleges around the United States since 2004, the Maryland facility was established with the blessing, and the money, of the People's Republic of China. The Chinese government continues to give it about $100,000 in financial support annually, and to pay the instructors from China who teach there. Such arrangements allow colleges to provide a lot more instruction and programming related to China.

Some faculty members and experts on Chinese politics worry, however, that the rapid proliferation of the institutes poses a threat to academic freedom and shared governance because of the way they involve the Chinese government in colleges' affairs. Professors at the University of Chicago protested its decision to open an institute there, and University of Pennsylvania faculty members cited concerns about Chinese-government involvement in opting not to seek to establish one.

The institutes "perform a propaganda function," says June Teufel Dreyer, a professor of political science at the University of Miami and a former member of the Congressionally established U.S.-China Economic and Security Review Commission, which monitors the implications of trade agreements between the two countries.

"It would be stupid," Dreyer said, "for the Chinese government to spend money on something that did not further its interests."

David Prager Branner, an adjunct associate professor of East Asian languages and culture at Columbia University who has studied the Confucius Institutes, said he fears that colleges with the institutes can become dependent on Chinese funds and thus susceptible to pressure from the Chinese government to stifle speech it opposes, such as expressions of support for Tibetan or Taiwanese independence. Foreign-language programs at American colleges, he says, are often so starved for resources that "they are not in a position to reject money, no matter where it comes from, or with what strings."

The only place where such fears have been realized is Israel, one of nearly ninety nations around the world that are now home to Confucius Institutes. There, a court held last year that Tel Aviv University, which houses a Confucius Institute, had violated freedom of expression by succumbing to pressure from the Chinese Embassy to cut short an art exhibition depicting Chinese-government oppression of the Falun Gong movement. The judge in the case concluded that the university's dean of students, Yoav Ariel, had feared that the art exhibit would jeopardize Chinese support for its Confucius Institute and other educational activities on the campus, according to reports in the Israeli newspapers *Haaretz* and *The Jerusalem Post*.

In the United States, Chinese diplomats have at times made their displeasure known when colleges have invited speakers that China strongly opposes. In January, for example, the University of Oregon came under—and resisted—pressure from the Chinese consul general in San Francisco to cancel a lecture by Peng Ming-Min, an advocate of Taiwanese independence.

Other colleges have heard protests from Chinese officials over plans to let the Dalai Lama, the Tibetan spiritual and cultural leader, speak on their campuses. Although the University of Washington played host to the Dalai Lama over Chinese objections in 2008, it came under fire for taking steps to ensure that he would not be asked questions dealing with the autonomy of Tibet or China's crackdown on unrest there. In Canada, the University of Calgary's decision to award an honorary degree to the Dalai Lama last year was followed by its removal from the Chinese government's list of universities it classifies as accredited.

Since the first Confucius Institute in the United States was established at Maryland, in late 2004, however, there have been no complaints of the institutes' getting in the way of academic freedom on American campuses or of Chinese officials' using their government's financial support for the institutes as leverage to get American colleges to squelch speech they oppose.

The Maryland institute has encountered "no interference and no pressure at all" from the Chinese government or from China's Nankai University, which sponsors the institute, says Chuan Sheng Liu, a professor of physics who has served as director of Maryland's Confucius Institute since 2006.

"We are an American university, and the most important value is academic freedom," Liu said. "We don't want anything to interfere with that, and we stand very firm on that ground."

Mary E. Gallagher, an associate professor of political science and director of the Center for Chinese Studies at the University of Michigan at Ann Arbor, said the Confucius Institute there has been free to cover some topics "that are controversial and sensitive in China," such as how its Uighur minority—members of which violently clashed with government forces last year—are depicted in the performing arts.

Although the Confucius Institutes "are not going to exist in a political vacuum," being influenced by political considerations "is a far cry from trying to infringe on free speech," said Robert A. Saunders, an assistant professor of history and politics at the State University of New York's Farmingdale State College, who has researched China's efforts to promote its culture. The Chinese government has probably concluded that it reaps so much benefit from the Confucius Institutes, he says, that doing anything that might jeopardize their image and their

acceptance by foreign governments and institutions "is just not worth it."

So far, China's effort to promote itself through Confucius Institutes has met with remarkable success. Since the first one opened in Seoul, South Korea, in late 2004, more than 280 have been established around the world, according to the Beijing-based agency that oversees them, the Office of Chinese Language Council International, more commonly known by its colloquial name, Hanban. Antarctica is the only continent without one.

Many experts on China characterize its campaign to set up Confucius Institutes as an exercise in "soft power," saying that the country sees the promotion of its culture and its chief language, standard Mandarin, as a means of expanding its economic, cultural, and diplomatic reach.

The idea of gaining more power internationally through the promotion of one's language and culture is hardly new. Leading French thinkers created the Alliances Françaises to promote their language and culture back in 1883. Germany has long advanced its interests through Goethe Institutes. Many other countries have set up similar organizations to expand their influence.

The Confucius Institutes are distinct, however, both in their tendency to be housed within universities and in the degree to which they are financed and managed by a foreign government. Hanban is overseen by officials of a long list of national ministries, including those of education, culture, commerce, and foreign affairs.

A college wishing to have a Confucius Institute must submit to Hanban an application describing the facility where the institute will be housed, plans to help manage and finance it, and projections of demand for its offerings. Hanban generally provides its U.S. institutes with about $100,000 annually, which must be matched by the host institution, as well as with instructors supplied by a partner university in China.

The Confucius Institute at Maryland has four teachers from China who are paid by Hanban and provide classes to students, people from the area who wish to learn Mandarin, and teachers undergoing training to offer Mandarin instruction in local schools. In addition, two interns—both recent graduates of Nankai University—teach a weekend Mandarin class to parents who have adopted children from China. Since its establishment, the number of students served annually by the institute has risen from about 20 to about 200. Full-time staff members, provided by Maryland, recruit distinguished scholars and organize lectures, seminars, and other activities.

Other Confucius Institutes at U.S. colleges operate in a similar manner, although they generally tailor their offerings and activities to local needs. The institute at the University of Kansas, for example, uses distance education to provide Mandarin instruction to rural schools throughout that state. The institute at the Community College of Denver operates a "Chinese Cultural Exploratorium" with interactive exhibits about Chinese culture. Western Kentucky University's newly established Confucius Institute counts businesses in that state among the constituencies it seeks to serve by offering language classes.

The Confucius Institute at the University of California at Los Angeles takes a different tack. Instead of focusing on providing Mandarin instruction—which was already widely offered on that campus—the UCLA institute has directed its energies elsewhere. Among its activities, it has brought American and Chinese scholars together to develop methods for translating the social sciences, offered a summer course introducing undergraduates to Eastern medical practices, and helped train local schoolteachers to work with the local Mandarin-speaking population.

In dealing with Hanban officials, "we are pushing it a little bit," says Susan Pertel Jain, executive director of the institute. "We are sort of making them think."

She adds, however, that there are limits to how far she is willing to test her university's relationship with Hanban, especially when it comes to dealing with matters that are politically touchy. "We are not going to create programming that is going to stir things up," she says.

Other U.S. colleges have resisted entering into such relationships. Among them, the University of Pennsylvania chose not to apply for a Confucius Institute, partly because it was uncomfortable with the Chinese government's involvement, says G. Cameron Hurst III, a former director of the university's Center for East Asian Studies.

At other colleges where Confucius Institutes have been established, faculty members have sought some say in the institutes' affairs and have complained when they did not get it. At Michigan, for example, faculty members expressed concern about academic freedom in the months before an institute opened there last year. "There was a pretty fair and open airing of concerns," says Ms. Gallagher, of Michigan's Chinese-studies center, and the university responded by establishing a faculty advisory committee to oversee the institute's programming and university financing.

In 2006 the Faculty Senate at the University of Hawaii-Manoa formally complained to the administration about not being adequately consulted about the establishment of a Confucius Institute there. Last spring, more than 170 faculty members at the University of Chicago signed a letter citing the university's establishment of a Confucius Institute without Faculty Senate approval as one of the reasons they believed its president, Robert J. Zimmer, was trampling upon their shared-governance rights.

The letter called the institute "an academically and politically ambiguous initiative sponsored by the government of the People's Republic of China." It said the university had proceeded "without due care to ensure the institute's academic integrity" and had risked having its own reputation used to "legitimate the spread of such Confucius Institutes in this country and beyond."

(continued on page 31)

censorship dateline

libraries

Athens, Georgia

An Oconee County Library patron asked librarians to remove an edition of Kate Chopin's novel *The Awakening* from a Banned Books Week exhibit specifically set up to recognize those books taken off library shelves in the past. The cover of the book - a novel about a woman whose desires run against the family structure of the 1890s - shows a painting of a woman's bare chest and upset the patron, said Kathryn Ames, director of the Athens Regional Library System.

Oconee County librarians set out Chopin's novel and other books once - or currently - banned from public and school libraries to demonstrate how some texts were taken off of bookshelves because of profanity, sexual themes or other content some found objectionable.

"They don't want us to necessarily remove the periodical. They want to make sure it's covered," Ames said. Patrons also question where a book is shelved and will ask that librarians move it to a different corner of the library, she said.

"Normally, it would be a young adult book that people think is too graphic sexually," Ames said. "That seems to be one of our flash buttons."

The Awakening was the third book a patron has complained about over last two years, said Jackie Elsner, director of Oconee County libraries. Patrons also have asked librarians to move *King Dork,* by Frank Portman, and *Ash*, by Malinda Lo from the young adult to the adult section of the library, Elsner said. Both books are coming-of-age novels that include sexual situations.

Both *King Dork* and *Ash* stayed in the young adult section after the board heard the complaint and a committee report on the book, she said. The library board will meet later to vote on *The Awakening*, Elsner said.

The board has found in favor of the complainant before, she said. "Actually, several years ago we found a book on the shelf that was out of date," she said. The book, *It's Perfectly Normal: Changing Bodies, Growing Up, Sex and Sexual Health,* dealt with sexuality and the board decided to remove it because of outdated information, she said. The board may move a book to a different shelf, but kids can read books from any section they choose, Ames said.

"If the children come, they have access to the full collection - we're not going to police everything," she said. Reported in: *Athens Banner-Herald,* October 2.

Waukee, Iowa

A complaint citing "foul language" and "cussing" has prompted the Waukee Public Library to reclassify one of the books formerly shelved in its young adult section. Following the recommendation of a five-person committee selected to evaluate the text, the board of trustees voted October 12 to move *The Notebook Girls,* which contains the real-life diary entries of four New York City high school students, to the library's adult nonfiction section.

"We got together and discussed our individual thoughts about the book, and the perceptions we came up with reading the book," said trustee Sue Ellen Kennedy, who also served on the reconsideration committee. "Then we discussed the different cultural and social aspects of the book as well, and we found unanimously that the book should be reclassified to adult nonfiction."

The Notebook Girls, by Julia Baskin, Lindsey Newman, Sophie Pollitt-Cohen and Courtney Toombs, includes frank discussions about adolescent sex, drinking and drug use. Body image, sexual orientation and the 9/11 terrorist attacks also are addressed.

Library Director Maryann Mori, who also served on the reconsideration committee, said most libraries in Iowa catalog the diary in their adult nonfiction sections. Other members of the reconsideration committee included trustee Jack Fellers and Waukee residents Isaiah McGee and Cindy Dolmage.

The board listened to a report from committee members and discussed the reconsideration request for about fifteen minutes before approving the book's immediate reclassification.

The Notebook Girls was added to the library's collection in 2006 as a young adult selection. Since that time about twenty people have checked out the book. Reported in: *Des Moines Register,* October 14.

Greensboro, North Carolina

By a vote of 8 to 1 on October 19, the Greensboro City Council passed a motion to use filters to restrict pornographic websites at the city's public library. The filters will

be used for children under 17 years of age and in Wi-Fi areas throughout the library. People over the age of 18 will have a choice to use the filters or not.

The motion stemmed from an incident six months earlier regarding a patron viewing pornography at the central library. Library director Sandy Neerman said an investigation led to the discussion on whether the library should put a filter in place. According to library officials, less than one percent of the 42,000 public computers used throughout the city have been used to download pornography.

"I think it's a very reasoned approach," said Neerman. "It enables us to maintain the mission of providing free (Internet) access to adults."

Neerman said adults using the computers will still be monitored by library staff. Reported in: myfox8.com, October 19.

schools

Buda, Texas

A Buda father upset about a book his young son brought home from school got that book banned from the school district.

His 8-year-old came home with *What's Happening To My Body: Book for Boys,* which includes definitions of rape, incest, sexual assault and even details how to have sex. The book says its for "boys ages 10 and up," but it was available to first graders as young as age 6.

The father took his concerns to the principal. The district has since pulled all of the books in all 21 school libraries. Reported in: WOAI.com, October 19.

Quitman, Texas

Jonathan Reck said his 14-year-old daughter was on the waiting list for days to check out *Vegan Virgin Valentine* from the Quitman Junior High library. "I don't think there's a parent in this town that would agree that that book needs to be on the shelf," he said. Reck said his girlfriend's son told him what the book was about, so he read a few pages himself.

"The scene it describes is right on the verge of pornography," he said, referring to a sexual encounter described in the book. "It leaves very little to the imagination." Some of the language is also quite frank.

Reck said he took the book to the Junior High school principal. Principal Garland Willis told him a committee would have to determine whether or not the book would be pulled. Reck said he then took his concerns to Superintendent Leland Moore. Reck was present when the superintendent told Willis to remove the book and others like it from the library shelves.

"When I left his office that day, I assumed that was the end of it," he said. That was in September.

Since then, two grievances were filed: one by the junior high principal, and the other by a group of English teachers. One grievance involved a batch of books pulled from the library.

District policy requires a committee of teachers, staff, students and parents to review and discuss questionable material before a decision is made to remove, or keep it. During the review process, the material is not removed.

Kent Weems, Quitman ISD board president, said the book problem was just part of an overall personnel issue that he could not discuss. He said the agreement was a mutual decision.

"Morally, and as a parent, I think [Moore] did the right thing," said Reck. Reported in: kltv.com, November 22.

Greenwich, Connecticut

Greenwich's top educator is defending the use of a hand-out sheet of literary passages containing racial, ethnic and gender slurs that was part of a homework assignment on free speech and censorship in the middle schools.

An "appetizer" to a project coinciding with the American Library Association's Banned Books Week, which took place in early October and celebrated the First Amendment, the handout was intended to get students to think about why certain literary classics are considered taboo, said Sidney Freund, the superintendent of schools.

Among the works quoted in the controversial hand-out, which did not say which books the racy passages came from but appeared to list their page numbers, were *The Pearl*, *To Kill a Mockingbird* and *Sounder*.

"They're all books that are in our library that any child can read," Freund said. "The quotes are being read by kids out of context on purpose. What we try to do always in school is we present things with opposing viewpoints."

The father of an 11-year-old Central Middle School accelerated learning program student who received the handout believes that educators crossed the line with the assignment, however.

"I feel as a parent of a seventh-grader that words that start with the letter `F' and are four letters in duration and that words that start with letter `N' and are six letters in duration are inappropriate," Gary Cella said. "Like many parents, I said, `Let's go over your homework.' When I saw this, I literally stopped in my tracks and did the classic double-take. It's not something you expect from any school."

A recurring theme among the passages, which also contain a series of expletives, is slavery and racism.

"`There are two things I can smell a mile,' the first man said in a loud voice. `One's a ham cookin' and the other's a thievin' n—— —,'" read one of the passages lifted from *Sounder*, a William H. Armstrong novel about the struggles of a black sharecropper family.

Freund said the handout was part of a broader project in which the students were expected to read from one of

the works on the ALA's banned book list and do a persuasive essay or PowerPoint presentation on the subject of censorship.

Never before has the school district received any complaints about the exercise, according to Freund, who said it has been part of the accelerated learning curriculum for a number of years. Freund did open the door to changes in light of the controversy, however.

"My caution would be in the future, if we're doing this and prior to doing it, is a letter to parents letting them know what we're doing and explaining the lessons since there was some obvious concern related to this," Freund said. "Some tempering of the quotes could be made, and we would not lose the essence of the message that we're trying to deliver to the kids about censorship. But overall, the lesson in the unit is a good one."

One of the controversial passages included in the hand-out came from "House Divided," part of collection of short stories by Ray Bradbury. It read: "Small fifteen-year-old fingers plucked at the buttons' on Chris' trousers like a moth drawn to an open flame."

Cella said he was so incensed by the racy content of the material that he called Freund's office and was referred to Shelley Somers, the Central Middle School principal.

"My goodness, they grow up so fast to begin with. Do you have to expose them to these words?" Cella said. "I spoke to some parents in the PTA, and they were really taken aback by it."

Sam Romeo, a child safety advocate, community leader and WGCH radio host, complained to school administrators about the assignment after hearing from parents. "Where is the sensitivity?" Romeo said, adding that people in the television and radio industry have lost jobs for using similar words. Just because the books are available in the library, Romeo said that doesn't justify lifting such inflammatory passages from them. "Can they also get a copy of *Playboy* and *Penthouse* magazine under free speech?" Romeo said.

School board member Peter Sherr confirmed that the issue is on the radar of educators but said he didn't want to pass judgment until he received a full explanation of the assignment.

"I've become aware of the situation," Sherr said. "I don't know all the facts yet. I believe the administration is addressing it. I'm looking forward to hearing all of the details."

Freund said he didn't know how many students received the handout and whether the assignment was limited to seventh-graders. The same subject matter was likely taught at Eastern and Western Middle schools, according to Freund, who said an argument could be made that abbreviating some of the slurs and expletives in the hand-out could be seen as window-dressing.

"I doubt there will be a kid who doesn't know what the word is," Freund said. "Again, they're going to read it in a book."

Cella argued that educators are sending a mixed message, however. "When your teacher is using the `F' word and the `N' word, it kind of OKs their usage outside that particular assignment," Cella said. "You can't have it both ways." Reported in: *Greenwich Citizen*, November 10.

Daytona Beach, Florida

It is a sad truth of public life that when a decision is made mainly out of fear of controversy, controversy usually ensues. To avoid controversy, Flagler Palm Coast High School decided to cancel a student production of *To Kill A Mockingbird*.

The reason was language. To wit, the racial slur known in polite company as "the N-word." It appears in the play 23 times. That's also the reason the novel *To Kill a Mockingbird* is a perennial on the American Library Association's challenged book list. It ranked No. 4 in 2009.

But the move hardly avoided controversy. Soon administrators found themselves talking about censorship and political correctness to out-of-town television and newspaper reporters. And more than a few people wondered what kind of education kids are getting in Flagler County.

"Are they being so protected from the bad words and uncomfortable thoughts that they are ignorant of history and sheltered from troubling ideas in literature?" as one local columnist queried. And, columnist Mark Lane added, "Remember, these aren't little kids we're talking about here. These are high school students. They are allowed into R-rated movies all by themselves. They know how to read things on the Internet. A student play is unlikely to harm their sensibilities."

To Kill a Mockingbird is a Pulitzer Prize-winning novel by Harper Lee written in 1960. It takes place in Alabama during the Great Depression, a time and a place where racial prejudice was harsh. If you depict that time and place, some unfortunate attitudes will be shown.

But the work also shows great dignity in the face of great injustice. It's no exaggeration that there are a lot of people practicing law today because they were inspired by the example of Atticus Finch, the defense attorney at the center of the book.

Lane continued: "I had to read the book in Seabreeze Junior High School. And even though I was an unsophisticated kid with a reading problem, I could figure out that the novelist included the N-word to show how evil, ignorant and stupid some people can be. Much the way Mark Twain used it in *Huckleberry Finn*."

Of course, *The Adventures of Huckleberry Finn* was No. 14 on the American Library Association's 2000-2009 most-challenged book list.

"There's a lot of ugly things in this world, son," Finch tells his son, Jem, in the film version. "I wish I could keep 'em all away from you. That's never possible." Reported in: *Daytona Beach News-Journal*, November 7.

Glen Burnie, Maryland

At North County High School in Glen Burnie, a small group of parents has circulated a petition to have Aldous Huxley's *Brave New World* removed from use by county schools over concerns about the book's explicit sexual content. The 1932 novel depicts a dystopian future where science and technology have run amok resulting in a morally bankrupt society.

"If you were to have images in what is depicted by this book - you would go to jail," said petition organizer David J. Cole of Linthicum. "If that's the type of literature that (the schools) think is appropriate for children … I disagree with that."

The 38-year-old father of three, including a 15- and 17-year-old at the school, was appalled when he learned that the book was being taught to tenth-graders as part of a pilot Science Technology Engineering and Mathematics program.

As of October 28 the small group of parents had collected around 250 signatures and met with a committee of teachers and administrators to try and have the book removed the book not only from the tenth-grade class, but also from the advanced placement honors curriculum, Cole said.

According to school representative Bob Mosier, the committee, which includes at least one non-staff adult representative, will meet once more with parents before rendering a decision. Under school policy, if Cole and the other parents are dissatisfied with the committee's decision, they can appeal to the director of curriculum or director of library media service, Superintendent Kevin Maxwell and ultimately to the Board of Education.

Linda Poole, who heads up the Secondary Reading, English and Integrated Literacy program, called the book an "excellent example of satire."

The supplemental text deals with ethical issues revolving around science and technology, she explained. "This is a satire written with that in mind - what could happen if science is misused," said Poole. "It is an internationally recognized text."

The text was approved for use in AP English countywide in March of 2009, Mosier said. Last spring it was approved and used in the tenth-grade STEM programs at both North County and South River.

While this is the first time that a parent has raised issues with this particular text, educators are always sensitive to such concerns from parents, Mosier said. Teachers will offer an alternative text to meet educational requirements at the request of either parents or students.

"When situations like this occur, we are as sensitive as we can be to work with parents," Mosier said.

However, for Cole and the other parents who want the book removed from the schools in its entirety, the option of an alternative text is not enough. In addition, there are more than 100 other approved texts that deal with similar issues of totalitarianism and the ethics of science, Cole said.

"If the schools choose to not hear the voice of the parents, we will continue to appeal … and try to get this book removed," said Cole. Reported in: *Maryland Gazette*, November 3.

Goffstown, New Hampshire

A New Hampshire parent has asked the Goffstown School Board to remove Suzanne Collins's *The Hunger Games* from her daughter's class, claiming that it gave her 11-year-old nightmares and could numb other students to the effects of violence.

Although Tracy LaSalle had yet to read the bestseller herself, on September 20 she requested the removal of the book from her daughter's seventh-grade class at Mountain View Middle School due to its violent subject matter. The book is being read aloud during a reading period for those who choose not to take a foreign language class.

The first novel of a trilogy, *The Hunger Games* involves teens who are forced by a postapocalyptic "Big Brother"-like government to fight a televised battle to the death.

"Mrs. LaSalle stated the main character is the only one of twenty-four children that survives in the book, that children are being killed for entertainment, pitted one against the other in a game," read Goffstown school board minutes from September 20. "Mrs. LaSalle asked what this book teaches students as far as honor, ethics, and morals. Mrs. LaSalle stated there is no lesson in this book except if you are a teenager and kill twenty-three other teenagers, you win the game and your family wins."

Philip Pancoast, a Goffstown school board member and parent who did read the book, questioned LaSalle's push to have the title removed. "It's your standard variety YA-fare," said Pancoast, a parent with a junior at Goffstown High School. "A fair reading of *Old Yeller* would likely cause a child to have nightmares of the death of the dog."

To censorship expert Pat Scales, the main concern is one parent attempting to set policy for the children of others. And this challenge, which came on the heels of the American Library Association's (ALA) Banned Book Week, is a cautionary tale other parents should note, she adds.

"When a parent objects to a book being taught, a lot of school districts say a parent can take a child out," says Scales, a former school librarian and member of ALA's Intellectual Freedom Committee. "And a lot of parents have an objection because they say their child is being singled out. But you have already singled your child out. And no parent has a right to select the curriculum."

Pancoast said the Goffstown School Board forwarded LaSalle's request to Superintendent Stacey Buckley, who already has gathered a committee to review the book. Principal Jim Hunt, school librarian Clare Yerbur, and teachers will be a part of that group, which was given thirty days to issue its findings.

Although the school district requests that formal book challenges be handled by filling out a request for reconsideration form, LaSalle has yet to do so. To date, *The Hunger Games* is still being read in class, and LaSalle's daughter is removed from class during that time. Three copies of the book remain in the school library.

Still, Scales worries about how parents deal with what they feel is objectionable material at school and suggests supporting students rather than seeking to censor. "I think parents should always have an open door," said Scales. "And a teacher should be open with a parent, and perhaps invite [the parent] to read along with them in class. But if you have one parent trying to dictate policy for all children, maybe all these other parents should speak up." Reported in: *School Library Journal*, October 19.

Lewis Center, Ohio

Daniel Watson cringed the first time he heard a fellow actor yell out the racial slur his grandfather had to endure while growing up.

Watson, an Olentangy Orange High School junior who is black, was at a rehearsal for *To Kill a Mockingbird*. Watson portrays the Rev. Sykes in the school's performance of Harper Lee's iconic novel.

Watson wasn't the only one initially uncomfortable with the racially charged language in the script. Concerns from parents prompted the school to schedule a discussion after the opening-night performance.

"For some people, (performing) brings it to life in a different way," director Cathy Swain-Abrams said. "Maybe we're safer reading it in a book."

With the 50th anniversary of the book's publication this year, Swain-Abrams thought it was an appropriate time to showcase the story. Set in the 1930s, the book tells the story of Atticus Finch, a Southern lawyer assigned to defend a wrongly accused black man, Tom Robinson. The book has been removed from several school reading lists and libraries for issues such as its use of racial slurs and the rape that is the center of the plot.

Stephen Lewis, whose daughter is in the play, took issue with the environment in which the play was presented. Administrators offered to hold the question-and-answer session after the play. Some dialogue changes also were made, including reducing the racial epithets used by the children portrayed in the play. Lewis, who is black, said he hopes the panel will give some explanation as to why students are performing a play with derogatory language and controversial themes.

"If you're going to put on something like this, I think the community is entitled to understand," he said.

Through discussions, Swain-Abrams said the students have grown in their understanding of the book.

Watson, the Orange junior, said the play is an opportunity to educate. It has prompted discussion among him and his parents and grandfather, who was wary of seeing the play because of the language. "People should come and learn beside us," Watson said.

The post-show panel also is an opportunity to highlight the work the school and district have done to improve diversity, Principal Todd Meyer said. That includes an annual multicultural fair, a Black History Month assembly and the start of a diversity club and council.

Swain-Abrams said this isn't the first time a performance at Orange has prompted discussion. During rehearsals for *The Sound of Music* in the spring, she addressed the rise of Nazism in Austria, as depicted in the play.

"It's very important to create an understanding for the students, so they're not just playing a caricature of the character," she said. "I want them to have that opportunity to not just be doing, but understanding." Reported in: *Columbus Dispatch*, November 4.

Gallatin, Tennessee

The Gallatin Board of Education is considering adoption of a book rating system designed to be a guide for parents about materials their children are required to read in the classroom. Hendersonville board member Tim Brewer in September announced plans to formally propose the idea, saying he wanted feedback from the school system's instruction department as well as fellow board members.

Brewer said he wished to develop a policy or else a rating system similar to that of movies or video games that note if a book contains potentially objectionable material such as sex or foul language or promotes anti-Christian values.

"I don't have any problem with other parents allowing their child to read those things, but I don't want my child reading filth in school," he said. "Parents should be made aware of what's being put before their children."

School officials said teachers select materials from several scholarly reading lists, and parents always have the choice to opt out if they object to a particular book. "Teachers are advised to carefully scrutinize all literary selections," said Jeremy Johnson, Sumner Schools spokesperson.

Johnson pointed to four separate school board policies that deal with selection of instructional materials, obscenity and controversial materials.

"Parents can request an alternative assignment, and we can remove the student from the classroom when the material is discussed," Johnson said. "In those cases, students are not penalized academically."

Brewer relayed his own experience from a few years ago when his daughter, now a college sophomore, was required to read John Steinbeck's *Of Mice and Men* in high school.

Brewer said he reviewed the book after his daughter complained, and he too objected to the book's profanity and racial slurs. "(My daughter) felt she needed to stand up for her Christian values by saying, 'I'm not reading this.' But by then, not only did her teacher have her reading it, but she

(was required) to sit in class and listen to a famous movie star read it on audio tape and follow along."

Considered a classic work of literature, *Of Mice and Men* tells the story of hardships endured by two laborers who wander from farm to farm looking for work in Northern California during the Great Depression. It is frequently banned in school districts across the country for containing inappropriate material, including using God's name in vain.

Brewer said he complained to school officials about the material at the time and his daughter was given an alternative assignment. "I'm not trying to legislate morality, but you can call it out, call it out for what it is," he said. "Parents have to legislate morality in their own homes. There should be some advanced warning so at least parents know and are aware of books like this." Reported in: *Gallatin News-Examiner*, October 7.

Loudon County, Virginia

Loudoun County school officials have decided to pull the textbook *Our Virginia* from its fourth-grade classrooms because of its claim that thousands of black soldiers fought for the South during the Civil War.

Schools spokesman Wayde Byard said *Our Virginia* was removed from classrooms October 20. "The book will remain suspended until the state reviews the entire text and issues supplemental material or corrections," he said.

Northern Virginia school officials were divided in their reaction to news that the textbook contains a passage that most historians regard as inaccurate. Although Loudoun is withdrawing the book, officials in Fairfax and Arlington counties say they will continue to use it in their classrooms. Alexandria does not use *Our Virginia*.

Prince William County is in the process of adopting textbooks, and *Our Virginia* is among the books being considered by the school system. The textbook will remain in consideration, along with six other titles from its publisher, Five Ponds Press. The books were automatically put up for review in the school system after being approved by the state.

A state official said the book was approved by the Department of Education without the input of a single historian or content specialist. "We really need to do everything we can to make sure this never happens again," said the department's spokesman, Charles Pyle. "We're going to emphasize to our textbook review committee members to look very carefully for bias and misinformation . . . and to pay particular attention to sensitive periods in American history."

The publisher has said it will provide a sticker to cover the disputed sentence in *Our Virginia*. The state Board of Education, which approved the book, said this week that the claim about African Americans fighting for the Confederacy falls outside "mainstream Civil War scholarship."

The textbook's author, Joy Masoff, who is not a trained historian, said she substantiated her assertion about black Confederate soldiers primarily by doing an Internet search, which led her to the work of the Sons of Confederate Veterans and some other sources. The heritage group disputes the widely accepted conclusion that the struggle over slavery was the main cause of the Civil War.

After historians discovered the controversial claim about black soldiers, readers identified another problematic passage, which states that "Brown bears stuff themselves on Fall berries" in the Blue Ridge Mountains. A photo of a bear is included below the passage.

In fact, only black bears live in that part of the state, not brown bears. Five Ponds Press issued a statement to school superintendents declaring that the controversial paragraph about black soldiers will be removed in the book's second edition and that "a questionable bear shown on the Blue Ridge Mountain page will be changed." Reported in: *Washington Post*, October 24.

Seattle, Washington

Something tenth graders at Nathan Hale High School in Seattle did was so upsetting to a student and her mom that it's resulted in a curriculum change at the school, and apologies from the principal. What were they doing? Reading Aldous Huxley's *Brave New World* as part of their language arts curriculum.

Set in the year 2540, the book depicts a world in which everyone's life is predetermined. Boys and girls are conditioned at birth to fulfill already designated societal roles. As a result, everyone grows up happy. Or, almost everyone. The conflict in the novel arises when a few people try to fight the system that's running and ruining their lives.

Sarah Sense-Wilson's daughter was required to read the novel for a class at Nathan Hale. She is Native American, and her heart started to sink as she turned the pages to find more than thirty references to "savage natives."

"She was very upset and she said, 'Mom I need to tell you something, but I don't want you to get mad. There's a book I have to read in my class and it portrays Indian people as being savages and living on reservations,'" Sense-Wilson reported.

She tried to read the book for herself. "I was outraged when I read through the book. I had to keep putting it down because it was so hurtful," says Sense-Wilson. "It was traumatizing to read how Indian people were being depicted."

The text has a "high volume of racially offensive derogatory language and misinformation on Native Americans. In addition to the inaccurate imagery, and stereotype views, the text lacks literary value which is relevant to today's contemporary multicultural society," she wrote in a complaint earlier this year to Nathan Hale and district administrators.

The chair of the language arts department, Shannon Conner, defended the merits of the book calling it a "superb

warning book about our future. Huxley cautions his future readers from becoming too reliant on, and compliant with, technology." But at the same time, the high school apologized and determined that the "cultural insensitivity embedded in this book makes it an inappropriate choice as a central text in our tenth grade curriculum."

They are no longer using the book. Sense-Wilson says she's "proud of" the way Nathan Hale has responded. "They've really listened, they have invited us to be part of the school, they now have a native club and they're extending themselves to really try to repair that damage," she said.

Sense-Wilson wants other high schools in Seattle to stop using *Brave New World* in their curriculum too. Sense-Wilson contends that she is not trying to ban the book. "We are not about book burning and we're not radicals," she said. "We're not trying to in any way censor that book, we're just saying it does not belong in high school. It is not appropriate for the curriculum."

If the book is an important or interesting novel for teenagers, she suggested putting it in the library. "Then if students want to go to the library and check that book out and read it for their own entertainment, that's fine," says Sense-Wilson. "Most of the kids I've talked to don't even like the book so I doubt it would even get an audience in the library." Reported in: mynorthwest.com, November 17.

Belleville, Wisconsin

The Belleville School District superintendent is deciding whether a book being read by high school freshmen should continue to be a part of the curriculum. This came after a complaint from a parent who wants the book banned from class. The concerned parent said she believes the book is offensive enough to affect other students and she wants it replaced as required reading.

"This is the first complaint we've had on it," said Superintendent Randy Freese.

For more than eight years, *Staying Fat for Sarah Byrnes*, by Chris Crutcher, has been the first book ninth-grade students at Belleville High School read. The book, which follows two friends in high school, discusses some controversial topics.

"The religious stuff, the abortion, the profanity —the theme underneath it all is it's a bullying situation and how people respond to that," said Freese.

These topics have one concerned parent asking the book be removed from the classroom. According to parent Lori Beil, "I am just one mom that cares what her son is reading at school. This is a required book in a required class," Beil said in the statement. "There is pornographic and other sexual content on several pages. There are at least 52 pages where the Lord's name is taken in vain or there are swear words and other vulgar words. Also characters 'portrayed as Christians' are sometimes ridiculed or portrayed in a negative way. This would not be allowed if the characters were Muslims, Jews, Buddhists, Hindus, or any other religion. This book is not required by the state of Wisconsin and is not being used at all Wisconsin schools. I believe the Belleville School District could choose a better book."

Beil is appealing a school district committee decision several weeks earlier that supported use of the book.

"The committee certainly felt that those topics are relevant to kids and those are the things that exist in their lives, and they think it should continue to be used," said Freese.

The school district said parents can opt their child out of a particular assignment if they don't agree with it. A teacher would then have to provide an equivalent assignment. Some believe, in this case, that should be enough.

"I don't see that it needs to be completely banned, that one or two parents can decide, for an entire community, a book that's banned or not in school," said Shannon Lancaster, a parent of five.

The superintendent said he is researching how other schools use the book and hopes to make a decision soon. "Ultimately, the question is probably not 'good book, bad book.' It's probably a case of might we find something better. There's a 'maybe so' component, like maybe we can find something better," said Freese.

If he supports the book, the request to remove it from class could go to the school board. Before anyone takes a side on the issue, Freese asked that they be informed and read the book first. Reported in: channel3000.com, October 22.

community college

Grand Rapids, Michigan

Richard Ryskamp, a trustee of Grand Rapids Community College, has won approval of a plan to discuss possibly cutting funds to a theater group that works with the college and that the trustee has accused of performing some "evil" works. In June, he criticized the college for working with the theater group because of its production of *Corpus Christi*, in which a Jesus-like character is depicted as gay. Other trustees agreed to discuss the issue at a retreat or a future board meeting, although one trustee expressed fear that the board might be moving into "operational matters" as opposed to the policy questions the board is supposed to consider. Reported in: insidehighered.com, November 17.

foreign

Jakarta, Indonesia

Indonesia turned a page in October by ripping up a fifty-year-old law that allowed the government indiscriminately to ban books it considered dangerous or too controversial.

Human rights groups said freedom of speech took a leap forward when Indonesia's Constitutional Court struck down the book banning law that had been in place since the days of former President Suharto in the 1960s. Successive governments have used it to clamp down on any form of public dissent, to bolster public order and to improve sensitive national security situations.

Suharto was well known for cracking down on dissent during his 32-year rule up to 1998. But since then, there has been a gradual widening of freedom expression for the nation's nearly 240 million people, the vast majority being Muslim. Even so, in the past six years, the law was used to ban 22 books. Most have dealt with the 1965 coup attempt but one dealt with the mass killing of suspected communists in 1965 and 1966, another with the insurgency and free-Papua movement in Papua, and two books were on religion.

The legal challenge to the law was mounted by several authors and publishers who argued that the government's banning powers curtailed freedom of expression.

In the landmark verdict, the Constitutional Court took away the powers of the Attorney General's Office to unilaterally ban books, saying such power should rest with a judicial court.

"The 1963 Law on Securing Printed Materials whose content could disrupt public order is against the constitution," Court Chief Mahfud, M.D., said. "The law is no longer legally binding."

Justice Muhammad Alim said in his statement that in a state governed by law, confiscating or banning publications and books should be done through the process of law. "If an action is categorized as being against the law, the process should be through the courts," he said.

He said that the authority to ban goods such as printed materials considered liable to disrupt public order can't be handed over to an institution without a court ruling.

"The authority of the attorney general to ban printed material or books without a court process is the approach of an authoritarian state, not one based on law like Indonesia," Alim said.

Government representatives took some consolation in the fact that the court didn't rule out book banning altogether. Also, the government can apply for a court to temporarily ban a book until due legal process has been completed to decide if the book should legally be banned in the longer term.

"If it is urgent, before a verdict, the Attorney General's Office can ask permission of the court but there should be certainty that [the book] is dangerous," Mahfud said.

The government also retains the right to monitor what publishing houses are preparing to print, giving the government a running start in any legal application to ban a book.

Government representative Mualimin Abdi welcomed the ruling. The authors of dangerous printed material "can be reported [to the police] according to the Criminal Code or could also be sued through the administrative court," he said.

Indonesia still has anti-pornography laws and a 1966 regulation banning communist material that might be used as a catch-all to ban material, activists said.

In February 2010, author John Roosa, upon learning that his own book concerning Suharto's coup in 1965 had been banned, wrote that he was surprised Indonesia still censored so many publications.

"When I first heard that the translation of my book, *Pretext for Mass Murder: The September 30th Movement and Suharto's Coup d'Etat* was banned, I had a deja vu," he wrote. "It was like I was still living in the era of Suharto when every printed material was censored, when college students were charged for reading books authored by Pramoedya Ananta Toer, when a lot of my friends were working anonymously and moving underground in the fight against the dictator."

Book bans are obsolete, said Roosa, who is deputy head of the history department at the University of British Columbia, Canada. "The book ban is an anomaly amid the remarkable progress in legal reform since 1998," he said. Reported in: upi.com, October 15.

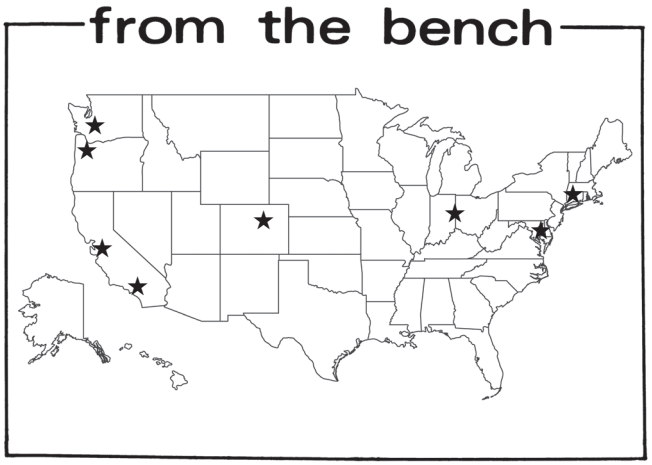
Kuwait City, Kuwait

A coalition of rights groups used October's Kuwait Book Fair to press the government to give up its wide powers to ban books and other publications. The protest was part of a broader struggle in Kuwait and across the Middle East as authorities seek greater openness to Western-style commerce but often are slow to give up controls considered necessary to safeguard traditional social values.

Kuwait has some of the most vibrant political debate and press freedoms in the Gulf, but the rights groups said only the courts —and not the Information Ministry —should hold censorship powers. "Censorship in Kuwait has no criteria, no standards. … We aim to change the process of banning," said Ahmed Soud, one of the protest organizers. "It should be restricted, so each book can only be banned by a court order." Kuwait's Information Ministry said 25 books out of 24,000 titles were banned at this year's book fair, which opened October 13. The fair is one of the major events for Arabic language publishers and book sellers.

But participants claimed that as many as 120 books were on the blacklist, which included political works and novels from well-known Egyptian authors such as Alaa al-Aswany and Gamal Al-Gitani. Saudi author Abdo Khal, winner of the 2010 Arab Booker Prize for the novel *Spewing Sparks as Big as Castles*, boycotted the book

(continued on page 31)



U.S. Supreme Court

The Supreme Court on October 12 let stand a decision dismissing a lawsuit filed by two people who were ejected from a speech by President George W. Bush in 2005. They had arrived in a car bearing a bumper sticker that said "No More Blood for Oil," and they claimed that their First Amendment rights were violated when they were marched out of the event.

When Bush spoke about Social Security at a Denver museum, it was an official function open to the public. The two people who were ejected, Leslie Weise and Alex Young, said they had engaged in no protest or disruption and were excluded only because of the message on the bumper sticker.

As is its practice, the court gave no reasons for turning down the appeal in the case.

Justice Ruth Bader Ginsburg, dissenting from the court's decision not to hear the case, wrote that she could not "see how reasonable public officials, or any staff or volunteers under their direction, could have viewed the bumper sticker as a permissible reason for depriving Weise and Young of access to the event." Justice Sonia Sotomayor joined Justice Ginsburg's dissent.

A divided three-judge panel of the federal appeals court in Denver dismissed the suit in January, with the majority saying the defendants were entitled to immunity from the lawsuit because there was "no specific authority" on the question of "how to treat the ejection of a silent attendee from an official speech based on the attendee's protected expression outside the speech area."

The dissenting appeals court judge, William J. Holloway, said the case presented an obvious violation of the First Amendment.

"It is simply astounding that any member of the executive branch could have believed that our Constitution justified this egregious violation of plaintiffs' rights," Judge Holloway wrote.

Justice Ginsburg said that no specific authority was needed, given a half-century of general precedent that applied "even to conduct startling in its novelty"—throwing people out of a public government event for views expressed elsewhere.

"Ejecting them for holding discordant views," Justice Ginsburg said of the plaintiffs, "could only have been a reprisal for the expression conveyed by the bumper sticker." Such official reprisal, she said, offends the Constitution.

Justice Ginsburg did say that the only defendants before the court in the case, *Weise* v. *Casper*, were volunteers, who may be entitled to protection under a 1997 federal law called the Volunteer Protection Act.

"Suits against the officials responsible for Weise's and Young's ouster remain pending," she wrote, "and may offer this court an opportunity to take up the issue avoided today." Reported in: *New York Times*, October 12.

In a lively and sometimes testy Supreme Court argument November 2 over a law banning the sale of violent video games to minors, the justices struggled to define how the First Amendment should apply to a new medium.

They tried analogies—to books, films, cartoons, comic books, fairy tales and rap lyrics. They argued about what the drafters of the Bill of Rights would have made of an extremely violent game like Postal 2. They worried about whether it made sense to extend, for the first time, principles allowing the government to regulate depictions of sex to depictions of violence. They considered conflicting studies on the effects of violent video games on young people. And they expressed doubt about whether the law at issue, from California, drew sensible distinctions among the games it covered.

The law would impose $1,000 fines on stores that sell violent video games to people under 18. It defined violent games as those "in which the range of options available to a player includes killing, maiming, dismembering or sexually assaulting an image of a human being" in a way that is "patently offensive," appeals to minors' "deviant or morbid interests" and lacks "serious literary, artistic, political or scientific value."

"What's a deviant violent video game?" asked Justice Antonin Scalia, who was the law's most vocal opponent. "As opposed to what? A normal violent video game?"

"Some of the Grimm's fairy tales are quite grim," he added. "Are you going to ban them, too?"

Justice Stephen G. Breyer took the other side. He said common sense should allow the government to help parents protect children from games that include depictions of "gratuitous, painful, excruciating, torturing violence upon small children and women."

In *Ginsberg* v. *New York* in 1968, the court did allow the government to regulate the distribution of sexual materials to minors that fell well short of obscenity,

which is unprotected by the First Amendment. Still, most of the justices seemed to agree that a ruling in favor of the California law would require a novel extension of First Amendment principles to expressions concerning violence.

In April, in *United States* v. *Stevens*, the court struck down a federal law making it a crime to sell videos of dogfights and other depictions of animal cruelty by an 8-to-1 vote, saying the court was not prepared to create a new category of speech outside the bounds of the First Amendment.

The court's decision just days later to hear the video game case, *Schwarzenegger* v. *Entertainment Merchants Association*, was thus a surprise, particularly as lower courts have been unanimous in saying similar laws violated the First Amendment.

"How is this any different," Justice Sonia Sotomayor asked, "than what we said we don't do in the First Amendment field in *Stevens*, where we said we don't look at a category of speech and decide that some of it has low value?"

Zackery P. Morazzini, a lawyer for California, said the state should have flexibility in limiting speech where minors are involved. The methodology of the *Stevens* decision, which left open the possibility that a more tightly drafted law might survive constitutional scrutiny, may provide the court with a template for its ruling on the California law.

But Justice Scalia said there was nothing in the tradition of American free speech that would allow the government to ban depictions of violence. The thought, he said, would have been foreign to the drafters of the First Amendment, drawing a needling comment from Justice Samuel A. Alito Jr., the lone dissenter in the *Stevens* case.

"What Justice Scalia wants to know," Justice Alito said, "is what James Madison thought about video games."

"No," Justice Scalia responded, "I want to know what James Madison thought about violence."

The California law was struck down by lower federal courts and has never come into effect. Justice Alito and Chief Justice John G. Roberts Jr. were, along with Justice Breyer, the members of the court who seemed most inclined to try to find a way to uphold the law.

Paul M. Smith, a lawyer for the video game industry, faced a barrage of hostile questions from those three justices, who elicited from him the acknowledgment that there was nothing states could do to regulate the sale of, in Justice Alito's words, "the most violent, sadistic, graphic video game that can be developed."

Current First Amendment doctrine would not allow it, Smith said, and social science studies do not suggest that a law banning violent games would be good policy even if it passed constitutional muster.

"The existing solutions are perfectly capable of allowing this problem to be addressed," Smith said, "assuming it is a problem." Among those solutions, he said, were the industry's own ratings, the cost of the games and the difficulty of playing them at home in secret.

Justice Elena Kagan, the court's newest and youngest member, seemed to be the only justice with even a passing familiarity with the genre under review, even if it was secondhand.

"You think Mortal Kombat is prohibited by this statute?" she asked Morazzini. It is, she added, "an iconic game which I am sure half the clerks who work for us spent considerable time in their adolescence playing." Morazzini said the game was "a candidate" for government regulation. Reported in: *New York Times*, November 2.

The Supreme Court returned November 3 to a subject that produced a major and closely divided decision eight years ago: how far may the government go in aiding religious schools?

In 2002, in a 5-to-4 ruling, the court upheld a school voucher system in Cleveland that parents used almost exclusively to pay for religious schools. Four new justices have joined the court since then, but there was nothing in the recent arguments to suggest that the issue has become any less polarizing.

The program at issue gives Arizona taxpayers a dollar-for-dollar state tax credit of up to $500 for donations to private "student tuition organizations." The contributors may not designate their dependents as beneficiaries. The organizations are permitted to limit the scholarships they offer to schools of a given religion, and many do.

The program was challenged by Arizona taxpayers who said it effectively used state money to finance religious education and so violated the First Amendment's prohibition on the official establishment of religion. The program was novel and complicated enough that the court's decision on the merits might not be particularly consequential. But a threshold question, about whether the challengers have legal standing to sue, could give rise to an important ruling.

As a general matter, plaintiffs who merely object to how the government spends their taxes do not have standing. But the Supreme Court made an exception for religious spending in 1968 in *Flast* v. *Cohen*.

Arizona, supported by the Obama administration, said the exception should not apply where tax credits rather than direct government spending were at issue. "If you placed an electronic tag to track and monitor each cent that the respondent plaintiffs pay in tax, not a cent, not a fraction of a cent, would go in any religious school's coffers," said Neal K. Katyal, the acting United States solicitor general.

"*Flast* recognized a special solicitude for taxpayers when money is taken out of their pocket and used to fund religion against their conscience," Katyal said. But that is as far as the exception should go.

That approach, Justice Stephen G. Breyer said, could amount to an end to many challenges to religious spending. "*Flast* is gone," he said. "There is nothing more to *Flast*, because it just happened that nobody had thought of this system at the time of *Flast*."

Justice Elena Kagan, who was until recently solicitor general, asked whether Katyal's position on the standing question meant that the court had been without authority to decide at least six other cases "but somehow nobody on the court recognized that fact, nor did the S.G. recognize that fact?"

Katyal said it was not unusual for the court to wait to decide a question until it was "teed up and presented to the court."

Justice Ruth Bader Ginsburg asked whether anyone, in light of his position, had standing to challenge the Arizona program.

"The way this scheme is set up," Katyal said, "our answer is no."

Paula S. Bickett, representing Arizona, said the state program did not violate the First Amendment "because it's a neutral law that results in scholarship programs of private choice."

But Paul Bender, representing the challengers in the case, *Arizona Christian School Tuition Organization* v. *Winn*, said the dollar-for-dollar nature of the tax credit meant that the scholarship money effectively came from the state.

The difference between the Cleveland voucher system in the 2002 decision, *Zelman* v. *Simmons-Harris*, and the Arizona program, Bender said, was that "religion was not involved in the distribution of the money to the parents." Reported in: *New York Times*, November 3.

The Supreme Court, siding with Stanford University and a host of other research universities, has agreed to hear a case that could solidify the legal grounds for universities to claim ownership of faculty inventions derived from federally sponsored research.

The universities and several academic groups had urged the high court to take the case and clarify that the intellectual-property rights granted to universities under the 1980 Bayh-Dole Act supersede any "side agreements between individuals and third parties." The Obama administration had also urged the court to take up the case, known as *Stanford* v. *Roche*.

The case arose from a 2005 patent dispute between Stanford and a company now owned by Roche Holdings AG. Stanford had sued the company for patent infringement, alleging that the university owned the rights to a test used in the treatment of AIDS because the work was financed in part with federal grants and the inventor, following standard practice, had assigned his rights to any inventions that might arise to the university.

But a federal appeals court in 2009 said that Stanford could not sue because the researcher, Mark Holodniy, who was also consulting for a company called Cetus, had given that company ownership rights. Cetus was later acquired by Roche.

Stanford, along with many research institutions and associations, said leaving the appeals-court ruling unchallenged would create a cloud of doubt over the ownership of thousands of university inventions.

The acting solicitor general in the Obama administration, Neal K. Katyal, echoed those sentiments in a friend-of-the-court brief filed in October, which said the appeals-court ruling undermined the intent of the Bayh-Dole Act and "turns the act's framework on its head." Reported in: *Chronicle of Higher Education* online, November 1.

schools

Tipp City, Ohio

Teachers have no First Amendment free-speech protection for curricular decisions they make in the classroom, a federal appeals court ruled October 21.

"Only the school board has ultimate responsibility for what goes on in the classroom, legitimately giving it a say over what teachers may (or may not) teach in the classroom," the U.S. Court of Appeals for the Sixth Circuit, in Cincinnati, said in its opinion.

The decision came in the case of an Ohio teacher whose contract was not renewed in 2002 after community controversy over reading selections she assigned to her high school English classes. These included *Siddhartha*, by Herman Hesse, and a unit on book censorship in which the teacher allowed students to pick books from a list of frequently challenged works, and some students chose *Heather Has Two Mommies*, by Leslea Newman.

A group of 500 parents petitioned the school board against the teacher, Shelley Evans-Marshall, calling for "decency and excellence" in the classroom. The teacher also had various run-ins with her principal. Despite positive performance reviews before the controversy, the principal's evaluations afterwards criticized Evans-Marshall's attitude and demeanor and her "use of material that is pushing the limits of community standards." The school board in March 2002 decided not to renew her contract, citing "problems with communications and teamwork."

Evans-Marshall sued the Tipp City, Ohio, school district and various officials in 2003, alleging that her termination violated her First Amendment free-speech rights. In 2005, she won a ruling from the Sixth Circuit that allowed her case to survive a motion to dismiss by the defendants. The court said at that time that it appeared that Evans-Marshall's termination was "due to a public outcry engendered by the assignment of protected material that had been approved by the board."

The suit proceeded to discovery until the school district defendants sought summary judgment last year. A federal district court granted the defendants' motion on the grounds that Evans-Marshall could not prove a link between the community outcry and the school board's decision not to renew her.

In its decision in *Evans-Marshall* v. *Board of Education of the Tipp City Exempted Village School District*, a Sixth

Circuit panel ruled unanimously for the school district and other defendants, but on other grounds.

The appeals panel said the teacher had clearly shown that "her teaching choices caused the school board to fire her." But while Evans-Marshall's case satisfied two earlier Supreme Court standards on public-employee speech (*Pickering* and *Connick*), she could not survive the court's most recent decision in this area: *Garcetti* v. *Ceballos*. In *Garcetti*, decided in 2006, the high court held that public employees do not have First Amendment protection for speech "pursuant to" their official duties.

"In the light cast by *Garcetti*, it is clear that the First Amendment does not generally insulate Evans-Marshall from employer discipline, even discipline prompted by her curricular and pedagogical choices and even if it otherwise appears (at least on summary judgment) that the school administrators treated her shabbily," said the Sixth Circuit opinion by Judge Jeffrey S. Sutton.

"When a teacher teaches, the school system does not regulate that speech as much as it hires that speech," Sutton wrote, borrowing language from a Seventh Circuit decision in a similar case. "Expression is a teacher's stock in trade, the commodity she sells to her employer in exchange for a salary. And if it is the school board that hires that speech, it can surely regulate the content of what is or is not expressed, what is expressed in other words on its behalf."

Sutton questioned how a school system could operate if all teachers had First Amendment rights to make their own curricular decisions.

"Evans-Marshall may wish to teach *Siddhartha* in the first unit of the school year in a certain way, but the chair of the English department may wish to use the limited time in a school year to teach *A Tale of Two Cities* at that stage of the year," Sutton wrote. "When educators disagree over what should be assigned, as is surely bound to happen if each of them has a First Amendment right to influence the curriculum, whose free-speech rights win? … Placing the First Amendment's stamp of approval on these kinds of debates not only would demand permanent judicial intervention in the conduct of governmental operations, but it also would transform run-of-the-mill curricular disputes into constitutional stalemates." Reported in: *Education Week*, October 21.

colleges and universities

Irvine, California

A federal appeals court has ruled against an emeritus professor who had accused the University of California at Irvine of trampling his free-speech rights, but the court did not take up the tough First Amendment questions that attracted national attention to his case.

In a terse, four-page decision issued November 12, a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit said the various university leaders named as defendants in the lawsuit were shielded from its legal claims under the Eleventh Amendment, which has been interpreted as granting sovereign immunity to state officials.

Having declared the defendants immune, the three-judge panel declined to weigh in on the merits of the First Amendment claims made by the plaintiff, Juan Hong, an emeritus professor of chemical engineering and materials science. "We leave the question of whether faculty speech such as Hong's is protected under the First Amendment for consideration in another case," the judges said.

Hong alleged in his lawsuit that he had been denied a merit salary increase in 2004 because he had criticized the hiring and promotion decisions within his department at Irvine and had voiced concern about its reliance on part-time lecturers to teach lower-division classes. A U.S. District Court held in 2007 that Hong was not entitled to First Amendment protection for such speech because he had made the statements at issue in his capacity as a state employee.

In ruling against Hong, the district court cited a 2006 U.S. Supreme Court decision in *Garcetti* v. *Ceballos*, which held that public agencies can discipline their employees for any speech made in connection with their jobs. That case involved a deputy district attorney, and the Supreme Court explicitly put aside the question of whether its logic would apply to speech made in an academic setting as well. Nevertheless, federal courts have applied the *Garcetti* ruling to several cases involving college faculty members, causing alarm among free-speech advocates who believe that letting colleges discipline faculty members over much work-related speech threatens academic freedom.

The Ninth Circuit panel could have denied immunity to the various university officials and administrators named as defendants in Hong's lawsuit if it concluded that they had violated a clearly established constitutional principle. But, the panel's decision said, "it is far from clearly established today, much less in 2004 when the university officers voted on Hong's merit increase, that university professors have a First Amendment right to comment on faculty administrative matters without retaliation."

Although the Ninth Circuit's decision was clearly a setback for Hong, it could have represented a much bigger setback for academic-freedom advocates if the judges had explicitly affirmed the lower court's application of the logic of the *Garcetti* decision to the dispute.

"The important thing for us is that the court does recognize that this is not a closed question," said Rachel Levinson, senior counsel for the American Association of University Professors, which had joined the Thomas Jefferson Center for the Protection of Free Expression in filing a friend-of-the-court brief urging the Ninth Circuit not to decide the case based on the *Garcetti* precedent. Reported in: *Chronicle of Higher Education* online, November 12.

San Francisco, California

A federal appeals court on November 17 tossed out a Christian student group's claim that a California public law school selectively enforced its nondiscrimination policy, ending an attempt to revive the closely watched case.

The case, brought by the Christian Legal Society chapter at the University of California's Hastings College of the Law, had already reached the U.S. Supreme Court, which ruled in favor of the law school in a 5-to-4 decision last June. That ruling, however, did not resolve all the issues in the case.

The Supreme Court rejected arguments that the law school had violated the First Amendment rights of students by requiring their chapter to admit gay students as a condition for receiving official recognition and financial support. But the justices referred a separate claim—that Hastings had enforced its policy selectively because of the group's political beliefs—back to the Ninth Circuit.

In the November ruling, a three-judge panel of the Ninth Circuit court said the group had not raised the new claim early enough. Therefore, the court has no authority to review it, the panel said.

"The selective application argument makes no appearance" in the body of the Christian Legal Society's opening brief, the panel wrote. The group "simply failed to raise this issue the first time around, and it is not entitled to 'a second bite at the appellate apple,'" the opinion says.

The Christian Legal Society could, if it chose, file another lawsuit raising the issue in the future, the panel said. Reported in: *Chronicle of Higher Education* online, November 17.

Boulder, Colorado

The Colorado Court of Appeals has upheld a lower-court judge's ruling that the University of Colorado officials sued by controversial scholar Ward Churchill were immune from his lawsuit accusing them of violating his First Amendment rights when they dismissed him as a tenured ethnic-studies professor on the Boulder campus. The 2009 ruling upheld by the appeals court had overturned a jury verdict in Churchill's favor. Churchill's lawyer responded to the appeals court's decision by saying he would ask the Colorado Supreme Court to take up the case. Reported in: *Chronicle of Higher Education* online, November 24.

harmful to minors

Portland, Oregon

On September 20, a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit held that two Oregon statutes that had criminalized giving sexually-explicit material to minors violated the First Amendment.

In theory, these statutes were intended to target the practices of "luring" and "grooming," by which adults expose minors to sexually-explicit material as part of their attempt to have sex with the minors. No party to the case contested the point that an adult's having sex with —or attempting to have sex with —a minor is wrong and should be illegal.

However, the Oregon statutes did not criminalize the combination of luring or grooming and sex with a minor, whether achieved or attempted. Instead, the statutes allowed prosecutions to occur when no sex by an adult with a minor had occurred, had been attempted, or had been intended.

Indeed, the core of the offenses at issue was not any sex act; it was the provision of the sexually-explicit material. And, as the Ninth Circuit panel concluded, the Oregon statutes defined what counted as sexually-explicit material under the statutes in a way that swept in a significant swath of First-Amendment-protected speech. Accordingly, the panel struck down the two statutes.

The first statute at issue criminalized providing children under the age of thirteen with sexually-explicit material. The second statute criminalized providing minors under the age of eighteen with visual, verbal, or narrative descriptions of sexual conduct for the purpose of sexually arousing the minor or the person providing the material, or inducing the minor to engage in sexual conduct.

Neither statute required that the material at issue must meet the Supreme Court's classic First Amendment test for when material is deemed "obscene as to minors" —a lower standard than the standard for when material is simply deemed obscene. Nor did either statute include the Court's classic "serious value" exception for worthy works.

Because of the statutes' lack of any such standard or exception, the Ninth Circuit panel concluded that the statutes could reach, for example, eminent novelist Margaret Atwood's *The Handmaid's Tale*; teen writer Judy Blume's explicit tale of a teen romance, *Forever*; and a number of commonly-used sex-education books that explain in factual but child-appropriate terms "where babies come from."

The statutes also lacked any exception for booksellers, although there was one for libraries. Thus, one of the plaintiffs in the lawsuit challenging the statutes on First-Amendment grounds was Portland bookstore Powell's Books. The fact that the statutes gave even Powell's good reason to fear criminal prosecution illustrates just how widely they swept.

In addition to ignoring classic First Amendment tests set forth in Supreme Court precedent, the statutes were also dangerously vague. Consider the second statute, which is triggered if an adult intends to sexually arouse a minor using the explicit material. If a 21-year-old chooses a movie because he knows that his 17-year-old girlfriend will find it sexy, is he suddenly a criminal? He did, after all, expose a minor to sexually-explicit visual material with the hope she would be aroused. (The statutes give the would-be defendant a pass when he or she is only 3 years older than the minor, but not if he or she is any older than that.)

Similarly, even a 21-year-old bookstore clerk's completing a sale to a young customer of a book that the customer has chosen could be illegal, if the clerk knows and intends that the customer will find the book sexy. For customers under 13, moreover, the first statute ensures that a bookstore clerk's simply handing the wrong book over, or forgetting to "card" a bookstore's customer to see if she is old enough to read it, could be enough for the clerk to go to jail.

As a result, Powell's Books had a genuine reason to fear prosecution if it did not both "card" its young purchasers before selling to them, and also act as a private censor, guessing which books would be deemed to run afoul of the law.

In court, the State of Oregon argued that these two statutes, in practice, are only applied when the material at issue is hardcore pornography, or could be deemed "obscene as to minors." The State also claimed that the Oregon legislature had never intended that the statues should ever be applied outside these bounds. And, it asked the court to narrowly construe the two statutes in a way that would make them constitutional —rather than striking them down.

Under First Amendment doctrine, an overbroad statute must be "readily susceptible" to this kind of narrowing for the court to have the option to narrow it, rather than strike it down. This test is designed to help out legislatures when their statutory drafting just barely missed the mark. In this case, however, the Oregon legislature totally flouted clear Supreme Court precedent that set forth mandatory limits on how far this kind of statute could reach.

Thus, if the Ninth Circuit panel had rewarded that approach with a narrowing construction, it would have invited the Oregon legislature, in future First-Amendment contexts, to continue to "Legislate first, and ask questions later." Legislators have their own legal counsel; they need to consult them, and not turn a blind eye to obvious legal constraints that should affect the way they draft legislation. Reported in: findlaw.com, September 27.

Internet

Boston, Massachusetts

On October 27, U.S. District Court Judge Rya W. Zobel granted a preliminary injunction against the online censorship law that went into effect in Massachusetts earlier in the year. Massachusetts booksellers, trade associations, and the American Civil Liberties Union of Massachusetts filed suit in July to block the law because it imposes severe restrictions on constitutionally protected speech on the Internet, on the grounds that such material might be "harmful to minors." The Court enjoined the law because it did not require that such material was purposefully sent to a person the sender knew to be a minor.

"We are obviously pleased with the court's decision," said John Reinstein, legal director for the ACLU of Massachusetts. "It lifts a burden from the plaintiffs, who rely heavily on broad-based communication about issues or materials that touch on sexuality and reproduction." Michael Bamberger of SNR Denton, lead counsel for plaintiffs, said, "Given the breadth of the definition of what is harmful to minors, all of which is not obscene and which adults have a constitutional right to receive, the injunction was necessary to ensure that all Internet communications were not reduced to the level of what is appropriate for children."

"The problems with this law show the danger of legislating out of fear, and in a hurry," said Carol Rose, executive director of the ACLU of Massachusetts. "This case is a reminder that we need to remain ever-vigilant in the defense of basic civil liberties against lawmakers who try to capitalize on cases involving children to expand government power in ways that could be used to silence booksellers, artists, healthcare providers, and the rest of us."

Signed in April by Governor Patrick and effective June 12, the law, Chapter 74 of the Acts of 2010, imposed severe restrictions on the distribution of constitutionally protected speech on the Internet. The law could make anyone who operates a website or communicates through a listserv criminally liable for nudity or sexually related material, if the material can be considered "harmful to minors" under the law's definition. In effect, it bans from the Internet anything that may be "harmful to minors," even though adults have a First Amendment right to view it. Violators can be fined $10,000 or sentenced to up to five years in prison, or both.

Plaintiffs in the suit against state attorney general Martha Coakley and Massachusetts district attorneys are the American Booksellers Foundation for Free Expression, the ACLU of Massachusetts, the Association of American Publishers, the Comic Book Legal Defense Fund, the Harvard Book Store, the Photographic Resource Center, Porter Square Books, and licensed marriage and family therapist Marty Klein. Reported in: Media Coalition Press Release, October 27.

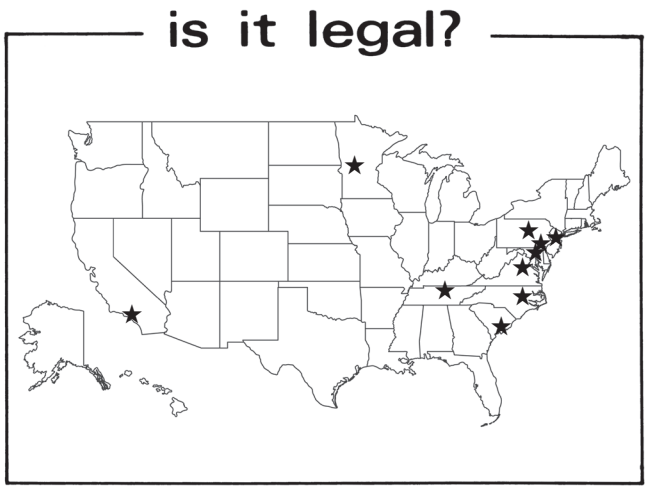
Seattle, Washington

A federal judge ruled October 25 that government requests for detailed information about Amazon.com customers violate Internet users' rights to free speech. The American Civil Liberties Union, ACLU of North Carolina Legal Foundation and ACLU of Washington intervened in the lawsuit on behalf of several Amazon.com customers whose information was at stake.

Recognizing that government requests for expressive information can have an unconstitutional chilling effect on constitutionally-protected behavior, U.S. District Judge Marsha J. Pechman of the Western District of Washington at Seattle wrote:

"The First Amendment protects a buyer from having the expressive content of her purchase of books, music, and

(continued on page 32)



library

Santa Clarita, California

The nonprofit group Save Our Library has filed a lawsuit hoping to stall the City of Santa Clarita from fully executing a contract with Library Systems and Services, the company primed to operate the city's three libraries come July 1 of next year. The group's attorney, Donald Ricketts, maintains that unwarranted access to the public's information is the primary issue.

"What the lawsuit says is you can't put the library into the hands of a private company," Ricketts said, "because to do so you would have to give them information which is confidential and which they need to run the library."

After the City Council voted 4-1 August 24 to secede from the County of Los Angeles Public Library (see *Newsletter*, November 2010, p. 237) and award a contract to Library Systems and Services, LLC, to run the City's three branches – twelve people sent a letter to the Council alleging a Brown Act violation had occurred.

Essentially, the Brown Act prevents California governmental bodies from holding secret workshops and study sessions where decisions concerning the public could be made without its attendance. According to Ricketts, subpoenas of former City Council member TimBen Boydston and current Deputy City Manager Darren Hernandez might produce some information that would support a Brown Act case.

Nevertheless, Ricketts stressed that what a Santa Clarita citizen should worry about is the potential access an outside company will have to some of his or her most valuable information. "That's the point that somehow hasn't gotten across," he said. "Somebody who has that information has got a big leg up if they want to do identity theft."

An application for a County Library card asks for one's driver's license number, residence address and the last four digit's of one's social security number. Ricketts believes LSSI will ask for the same information. Ricketts is also concerned about the effect marketers will have accessing the trove of information could be made available by LSSI.

"What you check out from the library tells a whole lot about what you think or what you like or what your interests are," he said. "The library information would be highly valuable to outside marketers, and I don't think the library patron wants that."

LSSI could simply draw up a contract where a prospective patron agrees to give up his or her information. "Nobody reads the fine print. I'm sure that thousands of people would sign those applications without reading them because that's what people do," Ricketts said. "It puts the patron between a rock and a hard place – use the library and you have to give up your private information.

"You have a right as a citizen to use the public libraries," he added. "Can they condition your right to use those libraries on the giving up of private information? That's what I think is wrong." Reported in: hometownstation.com, October 21.

schools

Raleigh, North Carolina

The American Civil Liberties Union claims in a lawsuit filed October 6 that a North Carolina school violated the constitutional rights of a 14-year-old student by suspending her for wearing a nose piercing. The lawsuit from the state chapter of the ACLU seeks a court order allowing Ariana Iacono to return immediately to Clayton High School, which has kept her on suspension for four weeks since classes started.

The complaint hinges on Iacono's claim that her nose piercing isn't just a matter of fashion, but an article of faith. She and her mother, Nikki, belong to a small religious group called the Church of Body Modification, which sees tattoos, piercings and the like as channels to the divine.

"This is a case about a family's right to send a 14-year-old honor student to public school without her being forced to renounce her family's religious beliefs," wrote lawyers from the ACLU and the Raleigh firm Ellis & Winters in a brief supporting the lawsuit.

The Johnston County school system has a dress code banning facial piercings, along with short skirts, sagging pants, "abnormal hair color" and other items deemed distracting or disruptive. But the dress code also allows for exemptions based on "sincerely held religious belief," and says, "the principal or designees shall not attempt to determine whether the religious beliefs are valid, but only whether they are central to religious doctrine and sincerely held."

That's where the school stepped over the line, the lawsuit alleges, saying officials repeatedly dismissed explanations of the Iaconos' faith by the family and their Raleigh minister.

"We followed all the rules, so I don't understand why the school is being so unreasonable," Nikki Iacono said. "The dress code policy allows for a religious exemption, and I explained to the principal and various school officials how my daughter's nose stud is essential to the expression of our family's religious values."

Terri Sessoms, spokeswoman for Johnston County schools, said the district had received notice of the lawsuit, but officials can't comment on disciplinary actions involving individual students.

Ariana Iacono had been suspended four times since fall classes started, missing 19 out of 28 school days as of the date the suit was filed. On October 4, the school system denied an appeal of her most recent suspension, and told her she'd have to attend South Campus Community School, an alternative facility for students with disciplinary and other problems. She still wouldn't be allowed to wear the nose piercing in the other school.

Nikki Iacono, 32, joined the Church of Body Modification in 2009, and her daughter followed a year later. Their minister, Richard Ivey, thinks school officials are dismissing a little-known belief system simply because it's unfamiliar.

"I'm shocked that it's gone this far, but I guess I'm not surprised they'd be so quick to stick with their first judgment and not hear anyone else's reasoning," he said. Reported in: Associated Press, October 6.

Nashville, Tennessee

Taylor Cummings was a popular basketball star on the verge of graduating from one of Nashville's most prestigious high schools until a post on Facebook got him expelled.

After weeks of butting heads with his coaches, Taylor, 17, logged on to the popular social networking site from home on January 3, 2010. He typed his frustrations for the online world to see: "I'ma kill em all. I'ma bust this (expletive) up from the inside like nobody's ever done before." Taylor said the threat wasn't real. School officials said they can't take any chances.

But the case highlights the boundaries between socializing in person at school and online at home. It also calls into question the latitude school officials have in disciplining students for their conduct online.

Since the suicide of a Missouri teenager who was harassed online in 2006, news reports show school officials have become sensitive to cyberthreats. In October, at a middle school outside of Syracuse, N.Y., a seventh-grader was suspended for setting up a Facebook page that hosted inappropriate and "libelous" material against a teacher. In Seattle, a middle school principal suspended 28 students for bullying one classmate on the Internet.

In 2009, two Dallas-area students were suspended for posting hateful comments about a specific teacher on a Facebook page, including "Join now and maybe we can all kill her together."

Taylor's father said the language his son used was inappropriate and banned him from posting on Facebook. But Harrison Cummings said Taylor shouldn't have been expelled from Martin Luther King Jr. Magnet, where he was just one semester away from graduating. Taylor said he regrets the posts and has since written a letter of apology to his coach. He says the posts were taken out of context and that he never intended to hurt anyone. He has no history of school violence and has never been in a fight or suspended before this incident, documents related to his expulsion show.

Taylor's profile was public, so there were no restrictions on who could view it. In documents, school officials said they were contacted about the posting by parents.

The Cummings family also argues that students and parents aren't properly educated or warned that what they write online can have consequences in the classroom.

"We have to take any threat as a potential for being a real threat," said Olivia Brown, spokeswoman from Metro Schools. "It's very difficult to say this child didn't mean it and this child did."

The district's "Code of Acceptable Student Behavior and Discipline" does not directly address social media outlets such as Facebook but gives principals the right to suspend or expel students for threats or for using threatening language. Cyber bullying and harassment is addressed briefly in a different district policy.

The Cummings family appealed Turner's decision to expel their son to a group of principals from other schools, but it was upheld. There are more options for appeal, but the family said they do not plan to pursue the matter any further. His parents plan to home school him for the remainder of the semester. He plans to go to college and then to law school.

David Hudson, a scholar at the First Amendment Center, said online speech for students is hazy because the Supreme Court has yet to decide a case on the matter. He said school officials must consider whether the threats are true, or whether the speech would cause a substantial disruption to school activities.

"True threats are not protected by the First Amendment, so you have to determine whether it is a true threat or whether there was another meaning," he said. Reported in: *Nashville Tennessean*, January 28, 2010.

colleges and universities

Washington, D.C.

In a move being hailed by some Jewish organizations as a major and welcome shift, the U.S. Education Department's Office for Civil Rights has signaled that it plans to step up its efforts to protect Jewish students from

anti-Semitism under a federal law that bars colleges from discriminating based on national origin or ethnicity. By adopting such a position, however, the office might have increased the likelihood that it will need to grapple with the thorny question of whether it should ever treat verbal or symbolic attacks on Israel or Zionism on college campuses as amounting to anti-Semitic acts that violate federal anti-discrimination laws.

"The elephant in the room is anti-Zionism," said Kenneth L. Marcus, director of the Initiative on Anti-Semitism at the Institute for Jewish and Community Research, who played a key role in the effort to persuade the department to take a stronger stand against anti-Semitism. "Lots of observers will be closely watching to see whether OCR can take a firm but reasonable line" in dealing with cases in which criticisms of Zionism or Israel appear to have an anti-Semitic component, he said.

Marcus said he wants the civil-rights office to take the position—already adopted by the European Union's advisory agency on human rights and freedoms—that criticisms of Israel cross the line into anti-Semitism when they are based on anti-Jewish stereotypes.

Morton A. Klein, president of the Zionist Organization of America, said his group similarly has been urging the civil-rights office to take the position that certain statements about Israel—such as arguments that Israel should not exist, or comments comparing the Israeli treatment of Palestinians to the actions of the Nazis—amount to anti-Semitic speech that the Education Department should take action against.

Calls to use federal civil-rights laws to curtail such speech, however, are almost certain to meet resistance from advocates of the First Amendment and academic freedom.

Rachel Levinson, senior counsel for the American Association of University Professors, said applying anti-discrimination law in such a manner would result in there being entire areas of scholarship that "might be cut off, or where people might be reluctant to tread."

Robert M. O'Neil, director of the Thomas Jefferson Center for the Protection of Free Expression, in Charlottesville, Virginia, said he thinks college officials should condemn statements about Israel that are blatantly anti-Semitic, but they should not feel compelled under federal law to do so. Any speech that does not fall under legally established, narrow exceptions to the First Amendment—such as speech that is obscene or defamatory or incites crime—"ought to be protected," he said.

The civil-rights office's intent to more aggressively fight anti-Semitism at educational institutions is tucked within a "Dear Colleague" letter on the issue of student bullying that Russlyn H. Ali, the department's assistant secretary for civil rights, issued to schools and colleges October 26. Although the letter focused on the civil-rights office's plans to treat some forms of student bullying and harassment as potential violations of federal anti-discrimination law, it contained language indicating that the department plans to respond to complaints of anti-Semitic discrimination much more readily than it has in recent years.

"This is a dramatic change in OCR's approach to these cases," Marcus said.

U.S. Rep. Bradley J. Sherman, a California Democrat who for two years had urged the civil-rights office to take such a position, issued a written statement that said: "The policy is now clear: Colleges and universities will no longer be permitted to turn a blind eye when Jewish students face severe and persistent anti-Semitic hostility on their campuses. The schools will now be compelled to respond."

The debate over how the office should approach complaints of anti-Semitism revolves around the complicated—and politically charged—question of when bias against Jewish people amounts simply to religious discrimination, or when it should also be regarded as discrimination based on ethnicity or ancestry.

The idea that Jews constitute a distinct race was infamously espoused by Adolf Hitler. But in the United States, it has at times served as a foundation for legal protection for Jewish people, as in a 1987 U.S. Supreme Court ruling—in the case *Shaare Tefila Congregation* v. *Cobb*—that held that Jewish people are covered under the prohibitions against racial discrimination in the Civil Rights Act of 1866 because they were widely thought of here as a distinct race when that measure was passed.

Title VI of the Civil Rights Act of 1964 authorizes the Education Department to deny federal funds to educational institutions found to discriminate based on race, color, or national origin. It does not, however, authorize the Education Department to take such actions in cases of religious discrimination, which instead fall under the jurisdiction of the Justice Department.

The Title VI enforcement policy that the Education Department has had on its books since 2004 states that the agency cannot ignore complaints of anti-Semitism because "Jewish heritage may include both religious and ethnic characteristics." During President George W. Bush's second term, however, the Office for Civil Rights had interpreted that policy as not covering anti-Semitic acts that do not overtly involve bias based on ethnicity.

Many Jewish organizations had reacted angrily when the office in 2007 refused to investigate some allegations of anti-Semitism in a complaint against the University of California at Irvine on the grounds that the alleged acts amounted to religious, and not ethnic, discrimination. The Zionist Organization of America has appealed that decision, and filed a separate complaint against the University of California at Irvine that led the Office for Civil Rights to undertake a second investigation in 2008.

In a letter sent to the Education Department in March, 13 Jewish organizations—including the Anti-Defamation League, Hillel, and the Zionist Organization of America—urged Secretary of Education Arne Duncan "to clarify that the Office for Civil Rights has clear authority to investigate

and remedy instances of harassment and intimidation against Jewish students."

When interviewed by the *Chronicle of Higher Education* in April, Ali, the assistant secretary for civil rights, acknowledged struggling with the question of how to apply Title VI to anti-Semitism complaints, saying, "I lose sleep over this one."

The Education Department could not have formally changed its Title VI enforcement policy without a lengthy process inviting public comment. Sunil Mansukhani, the civil-rights office's deputy assistant secretary for policy, characterized the discussion of anti-Semitism in its letter on bullying as a needed clarification of how the office plans to enforce the existing anti-Semitism provisions in Title VI.

The letter, Mansukhani said, sends colleges and schools the message that his agency plans to act against "certain types of discrimination based on ancestry—real or perceived." When his office gets complaints of anti-Semitic harassment, he said, it will make case-by-case determinations of whether acts that appear on the surface to be motivated by religious bias in fact stem from bias against a nationality or ethnicity with which that religion is associated.

The "Dear Colleague" letter says: "While Title VI does not cover discrimination based solely on religion, groups that face discrimination on the basis of actual or perceived shared ancestry or ethnic characteristics may not be denied protection under Title VI on the ground that they also share a common faith. These principles apply not just to Jewish students, but also to students from any discrete religious group that shares, or is perceived to share, ancestry or ethnic characteristics (e.g. Muslims or Sikhs)."

Marcus, of the Institute for Jewish and Community Research, who served as the Education Department's assistant secretary for civil rights from 2002 to 2004 and drafted the Title VI enforcement policy, said the letter issued by Ali "is a dramatic change in OCR's approach to these cases" and "returns the agency to the 2004 policy after six years of backsliding."

"The fact is that very, very few incidents of anti-Semitism in American higher education are exclusively religious," Marcus said. "They almost always have some ethnic or ancestral component to them."

"The key question," Marcus said, "is whether OCR will take its own policy seriously and enforce Title VI except in those rare instances where someone faces purely theological bias."

The Zionist Organization of America issued a statement in which top officials there said they were "enormously gratified" with the Education Department's anti-bullying letter. "Now, when Jewish students are being harassed or intimidated, or facing a hostile anti-Semitic school environment, their schools will no longer be able to ignore the problem, or make token efforts to redress it," the statement said. "There will now be financial and other consequences under federal law if colleges and universities do not respond to end the anti-Semitic harassment and prevent it from recurring."

Marcus said he is hoping that, in deciding whether to treat anti-Zionist or anti-Israeli statements as amounting to anti-Semitic harassment, the Education Department "takes seriously" a "working definition of anti-Semitism" adopted in 2004 by the European Union Monitoring Centre on Racism and Xenophobia, now known as the European Union Agency for Fundamental Rights. That advisory body's definition said anti-Semitic statements can include statements that deny the Jewish people their right to self-determination, apply a double standard to Israel "by requiring of it a behavior not expected or demanded of any democratic nation," hold Jews collectively responsible for the actions of Israel, or compare contemporary Israeli policies to the policies of the Nazis.

Cary Nelson, president of the American Association of University Professors, said he could conceive of a faculty member's criticisms of Israel crossing the line into anti-Semitism if they included, for example, a "rant" against Jewish people in general. And in the case of Kaukab Siddique, a tenured associate professor of literature at Lincoln University, in Pennsylvania, who has come under fire for calling for the destruction of Israel, Nelson said that the university has grounds to question Siddique's professional competence, given his denial that the Holocaust occurred (see page 302).

But, Nelson said, statements comparing the Israeli government to the Nazis or questioning the right of Israel to exist as a nation state are well within the bounds of discourse covered by academic freedom. The European Union agency's definition, he said, is "unacceptable" and "certainly is not compatible with academic freedom."

The Academic Senate of the University of California at Santa Barbara last year investigated a sociology professor who had been accused of anti-Semitism for sending students an e-mail message that likened Israel's treatment of the Palestinians in Gaza to Nazi atrocities against Jews. The investigation was later dropped, however, as was a subsequent Academic Senate investigation of its own handling of the matter. Reported in: *Chronicle of Higher Education* online, October 28.

Mankato, Minnesota

At many campuses, the visits of itinerant preachers infuriate some students, while others are entertained or perhaps inspired. These preachers generally set themselves up someplace central on a campus and shout their views to passers-by, typically attracting crowds with fire-and-brimstone theology. At many campuses, these appearances are known for the anti-gay rhetoric of the preachers. While private colleges have the legal latitude to regulate who may preach on their campuses, public colleges do not, and those that try to keep these preachers off campuses have frequently been slapped down by federal courts.

At Minnesota State University, Mankato, last fall, a preacher who periodically appears there has set off a debate over the appropriate way to respond to speech that some find offensive —but no one has tried to keep the preacher off campus.

Rather, students followed his most recent visit to the campus by going to the service at which he preaches on Sundays (at a YMCA), where they walked to the front of the room and held up signs with the names and photographs of gay youth who have killed themselves this year after bullying incidents. While the students and their supporters say that they have found a way to stand up to the preacher without violating the First Amendment, he is accusing a professor who advised the students of engaging in anti-Christian activity —and those statements have left the professor facing a barrage of hate e-mail messages.

Despite that, the professor said he would gladly help them again. And he said that it is important for colleges and universities that, for good reason, cannot bar someone from campus to still answer anti-gay rhetoric in some way.

"The answer to speech you don't like isn't to suppress it. The remedy is to speak back," said James P. Dimock, associate professor of communication studies at Mankato State. "That is what those kids did and why I am proud of them. They could have gone to the university administration and fought to keep this guy off campus —a fight they would probably have lost. But instead they answered speech with speech. I support what they did 100 percent and I think that they should be a model for how people should respond to these preachers everywhere."

The visiting preacher in question is Rev. John Chisham, known as "John the Baptist," of the River of Life Alliance Church. He appears not just at Mankato State, but at other colleges and universities in Minnesota. Students describe his campus diatribes as rude and hurtful, especially in his comments about gay people facing eternity in hell, and in his comments on women's clothing. Students say he tells women dressed in typical college attire that they are dressed like prostitutes.

Chisham said in an interview that when he goes to campuses, he does not want to single out gay people in any way and that he thinks many people are facing eternity in hell, not just gay people. But he said that students inevitably ask about his views on gay people, and that he answers that "homosexual relations are a sin" and that anyone who engages in gay sex will go to hell unless the person repents and receives God's help. This doesn't mean, however, that he is anti-gay, he said. "I have dear homosexual friends. I believe if they die with their sins, they are going to go hell," he said, but that fate can be avoided, and that's why he preaches.

"With God's help, it's possible. God has to give them a new heart," he said. "It's like with an alcoholic or an adulterous man or woman. They need new hearts," he said, and with a new heart from God, a gay person can stop being gay. He said that because he and other Christians love gay people and want to help them find God and not be gay, it is wrong to come to his church and link his preaching to the suicides of gay youth. "The only bullies in my church were the people holding signs," he said.

In his campus appearances, Chisham repeatedly invites students to attend his services. And those who went to his service to protest relied on that "invitation" to get into the service.

But Chisham said that was unfair. "If a professor said 'Why don't you come and attend my class?' I would take that to mean I'm going to go into the class and sit, and listen respectfully, and I would expect the same kind of decorum." (Both Chisham and those who protested agree that while the students held signs in front of the room, making it impossible for the congregation members to see their pastor without seeing images of gay youth who have killed themselves, the protest was a silent one —and did not stop the prayers or any other part of the service.)

Chisham said he has filed a complaint with the university, asking it to impose sanctions on Dimock, the professor who advised the students and who attended the service with them. But Chisham said he does not believe Dimock is being punished. "I think there should be sanctions," he said, "unless Mankato State doesn't mind being associated with someone disrupting a service of worship."

Tara Mitchell, a sophomore studying gender and women's studies at Mankato, said that she was inspired to organize the protest after hearing Chisham on his most recent campus visit. Mitchell, a lesbian who is involved in gay rights advocacy at the university, said that "he was saying nasty things" about gay people "going to hell," and that he was verbally attacking women who were dressed in ways he thought inappropriate.

She said the idea of the protest was that "if he can come to our campus, we should be able to go to his church." Mitchell also said that there is a link between rhetoric about gay people going to hell and the rash of suicides. "He preaches this message, which is hatred of the LGBT community, children hear that message and are told it is correct, they go to school and see a gay kid and they say hateful things to young gay kids."

If Chisham comes back to Mankato, Mitchell said, she will organize more students to go back to his service. "I will be there for every moment he is here," she said. For his part, Chisham said that "absolutely" he plans to go back to campus.

Dimock, the professor who accompanied the students, said he was motivated to get involved when he had two students —both in tears —visit his office after a previous campus visit by Chisham.. One student was gay and struggling with his sexuality. The other was a Christian, who was struggling with realizing that she had been raised to believe gay people were bad, and that she had just come to meet some and was finding "that they are not evil."

For Dimock, whose research and teaching focus in part on activism, advising the protesters was something he was

happy to do. He said that he strongly supports Mankato State's policy of allowing people like Chisham speak on campus. But he said he loved the idea of the students "giving him a taste of his own medicine."

The students involved were gay or gay rights supporters, and while Dimock has received many e-mail messages that accuse him of being gay or anti-Christian, he said that he's in fact straight, married to a woman, and a Sunday school teacher at the Lutheran church he attends. As a scholar who has studied protest movements and First Amendment rights, Dimock said he realizes that a church has a right to kick people out in a way that a public university does not. But he noted that the church's leaders never asked the student protesters to leave, that Chisham had made a point of inviting them to his services and that the students did not try to speak during the service.

Some websites that support Chisham have reported on the dispute online, with headlines such as this one on World Net Daily: "Prof, protesters punish pastor for speaking on campus." With such coverage, e-mails have come in from everywhere, Dimock said. "Most of my friends would consider it an honor to be hated by World Net Daily, but psychologically, it is disturbing that every time you open your inbox, you get e-mail from people who really, really hate you, and when you get e-mail from hitman@something.com telling you that you will burn in hell with sodomites."

Dimock said he doesn't respond to the e-mails, but he was tempted with one message. Someone wrote to him that "if you think gays are so weak, you should teach them to stand up for themselves." He said that when gay students went peacefully into Chisham's church, "that's exactly what they were doing. Reported in: insidehighered.com, November 1.

Lincoln University, Pennsylvania

A Pennsylvania English professor whose anti-Israel rhetoric and denial of the Holocaust as a historic certainty have ignited controversy is citing academic freedom as his defense.

Kaukab Siddique, associate professor of English and journalism at Lincoln University of Pennsylvania, appeared at a pro-Palestinian rally in Washington, where he called the state of Israel illegitimate. "I say to the Muslims, 'Dear brothers and sisters, unite and rise up against this hydra-headed monster which calls itself Zionism,'" he said at a September 3 rally. "Each one of us is their target and we must stand united to defeat, to destroy, to dismantle Israel —if possible by peaceful means," he added.

While many professors engage in anti-Israel rhetoric, Siddique is getting more scrutiny because his September comments prompted critics to unearth past statements that the Holocaust was a "hoax" intended to buttress support for Israel —a position that the professor didn't dispute.

Siddique maintained that his comments should be placed in the framework of academic freedom, as an example of a questing mind asking tough questions. He also warned of dire consequences if universities can be intimidated by politicians and outside commentators. "That's freedom of expression going up the smokestack here," he said.

"I'm not an expert on the Holocaust. If I deny or support it, it doesn't mean anything," he said before invoking the firebombing of German cities during World War II and the U.S. bombings of Hiroshima and Nagasaki as examples of the moral ambiguity of the war. "We can't just sit back in judgment and say those guys were bad and we were the good guys," he said. "I always try to look at both sides…. That's part of being a professor."

Siddique cited as scholarly evidence the work of notorious Holocaust denier David Irving, whom a British judge described as an anti-Semitic neo-Nazi sympathizer. "Irving has for his own ideological reasons persistently and deliberately misrepresented and manipulated historical evidence," High Court Judge Charles Gray wrote in a ruling shooting down Irving's claim of libel against the historian Deborah Lipstadt of Emory University.

The Siddique case isn't the first one in which a tenured academic has been criticized for questioning whether the Holocaust happened. Northwestern University periodically faces debate over Arthur R. Butz, an associate professor of electrical engineering who is a Holocaust denier, but who has avoided the topic in his classes.

Siddique's embrace of Holocaust denial could be treated differently because of what he teaches. Cary Nelson, president of the American Association of University Professors and a staunch defender of the right of professors to take highly unpopular positions, said that academic freedom protects the professor's right to criticize both Israeli policy and the moral legitimacy of the Israeli state. Holocaust denial is another matter entirely, said Nelson.

"Were he an engineering professor speaking off campus, it wouldn't matter," said Nelson. "The issue is whether his views call into question his professional competence. If he teaches modern literature, which includes Holocaust literature from a great many countries, then Holocaust denial could warrant a competency hearing."

Siddique's anti-Israel comments were first seized upon by conservative Christian commentators; links to video of his remarks at the rally appeared on Pat Robertson's Christian Broadcasting Network. Siddique said the firestorm that has erupted has been stoked by allies of Israel, and he says his criticisms of the nation are no more harsh than those espoused by President Carter.

"This is actually a concerted act by the extreme right wing aligned with Israel to destroy someone who spoke out against them," said Siddique. He said he had received

hateful e-mails and phone calls every day since the controversy broke. Some simply bore four-letter words. Others threatened death. "I see this as a tremendous dumbing down of the discourse," he said.

Siddique's statements also prompted a letter from two Pennsylvania state senators who questioned whether the professor had expressed these views in class and what steps were being taken to prevent him from doing so. Both Siddique and the university said he had never broached the subject in class.

Lincoln University sought to distance itself from the professor's comments, calling them "offensive" in a prepared statement, and adding that his "personal views and expressed comments do not represent Lincoln University."

Lincoln is a historically black college that is about 45 miles southwest of Philadelphia. It is one of Pennsylvania's state-affiliated institutions. In the current budget year, Lincoln is receiving more than $13 million in operating money from Pennsylvania, according to the state budget.

The letter from the senators followed a resolution introduced in the state senate in April that condemns what it calls the resurgence of anti-Semitism on college and university campuses. The resolution called upon the state's education agencies to "remain vigilant and guarded against acts of anti-Semitism against college and university students," though it recommends no sanctions for those who fail to do so.

State Senator Anthony Williams, who is one of the two who wrote to Lincoln, and who sponsored the resolution, took to the floor of the senate in April to speak on its behalf. "I come from a community that has felt the sting of oppression and discrimination," said Williams, who is black. "To see that anti-Semitic feelings have evolved in this country on college campuses is not only paradoxical, but it is an oxymoron. It is absolutely polar to the example that universities should be establishing and setting across this great country." Reported in: insidehighered.com, October 26.

Charlottesville, Virginia

Virginia's attorney general, Kenneth T. Cuccinelli II, has reissued a controversial demand for documents that he says may show that a prominent climate scientist, Michael E. Mann, violated a Virginia fraud statute in applying for a research grant while he was a faculty member at the University of Virginia. The new request came a month after a state judge threw out Cuccinelli's original demand that the university turn over a decade's worth of documents, saying that he had failed to explain the allegations under investigation and that four of the five grants Cuccinelli said he was investigating were federal grants not covered by the state law, while the fifth grant was made before the law took effect, in 2003.

In his new demand, Cuccinelli omitted the four federal grants, but says that "claims for payment and at least some payment" under the fifth grant occurred after the law took effect. He also details the allegations against Mann, now a faculty member at Pennsylvania State University at University Park, saying that the application for the fifth grant included references to two papers "which Dr. Mann knew or should have known contained false information, unsubstantiated claims, and/or were otherwise misleading."

The complaint adds that "some of the conclusions of the papers demonstrate a complete lack of rigor regarding the statistical analysis of the alleged data, meaning that the result reported lacked statistical significance without a specific statement to that effect." The university was given until October 29 to produce the documents, which include all correspondence from 1999 through 2006 between Mann and 39 other researchers, as well as all correspondence between Mann and research assistants, secretaries, and administrative-staff members. Reported in: *Chronicle of Higher Education* online, October 4.

prison

Moncks Corner, South Carolina

The American Civil Liberties Union is suing a South Carolina jail over a policy that prohibits inmates from having any reading materials other than the Bible.

The ACLU filed a federal lawsuit October 6 seeking to overturn the policy on behalf of *Prison Legal News*, a monthly journal on prison law. Since 2008, the magazine's publishers have tried to send magazines, letters and self-help books to inmates at the Berkeley County Detention Center in Moncks Corner, about 100 miles southeast of Columbia. Some were sent back, and in July, a jail official wrote an e-mail to the publishers referencing the jail's policy.

"Our inmates are only allowed to receive soft back bibles in the mail directly from the publisher," First Sgt. K. Habersham noted in the e-mail. "They are not allowed to have magazines, newspapers, or any other type of books."

ACLU staff attorney David Shapiro said the policy effectively bans prisoners from all books and violates a number of the magazine's and inmates' constitutional rights.

"The first [right it violates] is the right to free speech guaranteed by the First Amendment, which carries with it the right to receive materials and read," he said, adding that the policy also discriminates on the basis of religion.

The jail said that it doesn't have a library and confirmed the only reading material its roughly 450 inmates are allowed to have are paperback Bibles. A spokesman for Berkeley County Sheriff Wayne DeWitt said the sheriff had not seen the lawsuit and could not comment.

In addition to unspecified punitive damages, the lawsuit asks a federal judge to order the Bible-only policy halted and to let a jury hear the case. Reported in: npr.org, October 7.

homeland security

Washington, D.C.

Privacy and civil-liberties advocates on November 16 called for controversial passenger-screening procedures at the nation's airports to be suspended and for Congress to investigate whether the Transportation Security Agency (TSA) of the Homeland Security Department has misled the public about the safety of whole-body scanning machines.

The TSA has come under fire for its new full-body scanning machines, which have been put to use in 70 U.S. airports in October and November as well as the new "enhanced" pat-down searches TSA workers are conducting on travelers who refuse to go through the new machines. The TSA has asked for the public's cooperation as it implements the new procedures.

The advocates, including consumer activist Ralph Nader, want the use of whole-body imaging machines to be suspended at least until the department conducts a rule-making process under which it discloses detailed information about the safety of the machines and allows for public comment.

Nader, speaking on a conference call with reporters, said that opposition to the machines' use is growing from many organizations, including travel groups and pilots' unions.

"With the travel industry, the airline industry, the airline pilots, the unions, and the traveling public increasingly opposed to this, TSA's position simply cannot stand. They're going to have to suspend the program," Nader said. "Increasingly the burden will be on the U.S. Congress."

A firestorm of opposition to the new policies began to develop after a video went viral featuring John Tyner, a man who recorded his enhanced pat-down on November 13 and warned the TSA agent not to "touch my junk." In the days following, Comedy Central's "The Colbert Report" ran a lengthy segment ridiculing the TSA procedures, and the tech website Gizmodo published a slideshow of 100 images from full-body scanners that it obtained after filing a Freedom of Information Act request. Saturday Night Live mocked the pat-down procedures, and Capt. Chesley "Sully" Sullenberger, known for successfully landing a plane in the Hudson River, spoke out against them.

Marc Rotenberg, president of the Electronic Privacy Information Center, noted that Congress has intervened before to stop intelligence or security programs in the face of public opposition, such as the so-called Total Information Awareness program and Secure Flight. Indeed, TIA funding was canceled, while DHS had to revamp the Secure Flight program.

EPIC also planned to file a lawsuit seeking to require Homeland Security officials to turn over scientific and medical information about the whole-body imaging machines, Rotenberg said. The group tried unsuccessfully to get the documents through a Freedom of Information Act request, he added.

TSA and the Food and Drug Administration wrote in an October 12 letter to the White House Office of Science and Technology Policy that "the potential health risks from a full-body screening with a general-use X-ray security system are minuscule.

"This technology has been available for nearly two decades, and we have based our evaluation on scientific evidence and on the recommendations of recognized experts," the agencies wrote. "As a result of these evidence-based, responsible actions, we are confident that full-body X-ray security products and practices do not pose a significant risk to the public health."

Meanwhile, representatives from passenger-rights groups FlyersRights.org and WeWontFly.com said that they support suspending both the use of whole-body imaging machines and physical pat downs at airports because they are too invasive.

WeWontFly.com is calling for people to boycott air travel. The group also asked passengers to boycott going through the machines if they have to fly on Thanksgiving Day —an act of civil disobedience that could disrupt travelers' schedules. However, such a boycott did not materialize.

FlyersRights.org has a toll-free hot line for passengers to report problems they encounter at airports.

Although a poll conducted by CBS News shortly before implementation of the new scanning policies showed that four of five Americans suupported the new procedures, after a week of publicity there were signs that public opinion might be changing.

A new survey, conducted for ABC News by Langer Associates, found 64 percent of Americans in favor of the full-body x-ray scanners, and 32 percent opposing them. That still reflects a clear majority; moreover, most of those who told ABC News that they support the x-ray scanners said they did so strongly

The ABC News poll also found that 50 percent of Americans think the TSA's "enhanced" pat-downs go too far—and 37 percent of Americans feel strongly so—versus 48 percent who say they are justified. It is important to clarify that, as the ABC News poll correctly identifies, the TSA is in the process of implementing two separate and distinct security procedures: the new x-ray scanners on the one hand, and more thorough and invasive personal searches of some passengers on the other hand.

The ABC News poll also suggested that opposition to the measures is higher among those who fly regularly. Among Americans who fly at least once a year, 58 percent support the new x-ray scanners, versus 70 percent of Americans hands are inspected for trace chemicals. They will also be screened with a hand-held metal detector,

(continued on page 32)

success stories

schools

San Luis Obispo, California

Despite containing a passage that graphically details sexual assault, a book about apartheid will not be banned from San Luis Obispo High School, a review committee unanimously decided October 18. While the book, *Kaffir Boy*, by Mark Mathabane, has been taught at the school for more than a decade, there have never been complaints about it until this past spring, honors world history teacher Carrie Zinn said.

In fact, librarian Vicki Carroll added, a copy of the book has been in the library for a long time with little notice. "Nobody has read it in years," she said. "Until now."

Controversy arose when anonymous letters complaining about *Kaffir Boy* were sent to Zinn, school administrators and the school board. The letters complained specifically about a single page describing boys prostituting themselves for food.

While the state Department of Education recommends the book, it does so with caution, suggesting schools invite parental views—which is why the San Luis Obispo High administration arranged for the hearing. Still, the review committee wasn't merely an advisory group. It had authority to ban the book, offer an alternative with an abridged version or take no action.

Zinn said she introduced *Kaffir Boy* after honors students asked to be challenged more. Had parents complained about the book to her personally, she said, she would have made arrangements for the complainant's child. "And that just didn't happen—and here we all are," Zinn said.

After the complaint was received, the district assigned Principal Will Jones to create a review committee. The seven-person group, consisting of staff, students and community members, first heard input from the fifty people who crammed into one of the high school's classrooms. The audience unanimously favored keeping the book, both in the library and as a part of the honors class curriculum. When a committee member asked if the anonymous letter writer was in the audience, no one responded.

Some of those at the meeting complained that a single anonymous parent should not be allowed to cause such a stir. A few said high school students were old enough to handle the language used—one student suggested she heard similar language daily. And a couple of teachers expressed concern that banning *Kaffir Boy* would lead to challenges to other books.

While teacher John Franklin suggested that the abridged version still conveyed the horrors of apartheid, others contended an edited version whitewashes history and disrespects victims of segregation. "We really learned to understand and grasp what these people went through," said senior Elizabeth Schmidt, who was on the committee.

With no opposition, the committee decided that the book would not be banned. Reported in: *San Luis Obispo Tribune*, October 18.

Plano, Texas

The content in a Humanities textbook has brought complaints from some parents, followed by the book's removal from the shelves of the schools by the Plano Independent School District. That was followed by a decision to place the book back on the shelves.

The district removed the textbooks after two people complained about photos of nude sculptures and other works of art from ancient Egypt, Greece and Rome, as well as the Italian Renaissance. The textbook is used by hundreds of freshmen and sophomores in the district's gifted and talented program and has never received complaints before this recent issue.

Lesley Range-Stanton, director of communications for the District, explained that the curriculum department recently reviewed and assessed a text for the ninth- through tenth-grade Humanities course after a parent brought an issue to the staff's attention.

"Initially, the material was to be replaced with alternative resources," Range-Stanton said. "After further review of local board policy, our secondary curriculum staff has determined that the book, *Culture and Values: A Survey of the Humanities*, should be considered a supplemental instructional resource for the course, since it is locally chosen and purchased and is not provided within the state textbook adoption process."

Range-Stanton said that this text is used in conjunction with the texts *World Civilizations: The Global Experience* and *World Literature* to provide a two-year learning experience for high school PACE (Plano Academic and Creative Education) students.

Range-Stanton explained that any individual concerned over the content of the book can now follow the challenge process as provided for under local board policy where there is a procedure for contesting content or materials used in a classroom.

The policy states: "A parent of a district student, employee, or other resident may formally challenge an

instructional resource used in the district's educational program—except as stated below—on the basis of appropriateness." The "below" section refers to materials not subject to the reconsideration process.

"Textbooks and their ancillary/supplementary materials approved in the textbook adoption process are not subject to reconsideration during the term of the adoption," the policy states. "Supplemental programs, speakers, and resources—other than state-adopted materials—are subject to principal, teacher, and building-level review. In addition, any supplemental program approved for district use is subject to the district material reconsideration process."

The removal of the book inspired a reaction from hundreds of current and former students in addition to parents.

Ashley Meyers, a former Plano student, used the book seven years ago; in response to the district's decision to remove the book, she started a Facebook campaign which received support from 576 Facebook members. The Facebook campaign inspired letters and e-mails to be sent to the district out of concern.

Jim Hirsch, associate superintendent for Academic and Technology Services, said that a mistake was made in how the book was classified originally. After the overflow of concerns about the removal of the text, the staff reviewed the policy and the textbook and learned that the book was not part of the state's adoption program but was supplementary material, which allowed them to keep it in place.

"Books selected by the state go through a lengthy adoption process," Hirsh said. "But because this book was selected and purchased through the local district, the district policy states that any locally approved books undergo a board review before they are removed."

Maran Nelson, another former student who used the text in her humanities class, said she joined Meyers' group on Facebook and even sent out e-mails to more than 600 people in hopes of their support.

She is excited the district's decision was repealed, as she said she took Humanities at Shepton High School using the same book and enjoyed the class. Nelson graduated from Plano West Senior High School in 2009 and currently attends the University of Texas at Austin.

"I was embarrassed to see one of the district's premier curricula fall victim to mindless administrative bungling," Nelson said. "The Humanities program was a signature course that I still consider an essential component of my K-12 education, and the textbook at the center of the controversy is overwhelmingly regarded by students both past and present as an exceedingly informative reader of superior editorial quality."

Nelson was glad to hear that it was all a "big mistake" but said she believes that a single parental grievance does not constitute a mob of opposition, which she feels is what happened when the district pulled the book.

"This unwarranted textbook replacement would have had a deleterious impact on the Humanities course curriculum and the reputations of PISD schools," Nelson said. "The district has already done a great disservice to its local and national public image by allowing the non-issue to progress as far as it did."

Katherine Terrell, a student who spent 12 years in the PISD, attended Yale University and is currently studying law at Columbia Law School, said she was upset to hear that PISD chose to ban the longtime Humanities textbook after complaints about its content.

"I attended Shepton High School, where I took Humanities my freshman and sophomore years, and graduated from Plano West Senior High," Terrell said. "I can personally credit the challenges of the Humanities class, the high performance of its teachers, and the quality of the textbook as some of the best preparation I had for my liberal arts education."

Terrell said that she appreciates the desire of parents to protect their children from content they consider inappropriate, but she wanted to encourage both parents and PISD to consider the consequences of that action.

"As the college application process becomes increasingly competitive, parents should encourage the highest possible quality of education for their children. Part of that education is an appreciation for world culture and arts, and artists from the ancient Greeks to Michelangelo to Picasso have chosen to represent the nude form," Terrell said. "To erase these works from a course in art history is to misrepresent history itself." Reported in: *Plano Star-Courier*, November 18.

Appleton, Wisconsin

Parent Linda Hash said a young adult novel's "offensive content" prompted her challenge requesting that the Appleton Area School District ban it from the ninth-grade curriculum as age inappropriate. The district's advisory panel that heard her objections October 25 disagreed, however, recommending the book remain on the required reading list.

Hash appeared before the district's 13-member Materials Review Committee to air her concerns about *The Body of Christopher Creed*, by Carol Plum-Ucci. About 25 people attended.

Hash said she chose to opt-out her son from reading it in communication arts class last school year because of its "profanity, vulgarity, sexual slang, sexual references, sexual situations, underage drinking, computer hacking, breaking and entering," and other situations, but also felt compelled to take her complaint further to the building and district level.

"It disturbed me so much that I decided I would be doing a disservice to our students if I left it at that," she told the panel. "I spoke with other parents and friends and was not at all surprised to find that they too were disturbed that a book with such content would be read by 14-year-olds when there is so much quality literature available."

The advisory panel, which includes educators, students and community members, thought differently. After listening to Hash and other presenters, and working through a checklist to determine whether the book fits the goals and objectives of the freshman curriculum, the panel recommended unanimously to School Supt. Lee Allinger that the book remain where it is.

Allinger, who attended the session, said he will review the recommendation and let Hash know his decision soon. Hash, who met with Allinger afterward, said she has not made up her mind whether to appeal because she isn't sure how "fruitful" that would be.

"It's one thing to satisfy the curriculum. It's another thing to think about how we want to satisfy the curriculum and that's one thing they didn't address. Is this the way we want to fulfill the curriculum? I don't think so."

Appleton East High School communication arts teacher Eric Ward, who has used the novel in class this year and last, provided the panel with a detailed account of how he connects the book and its real-life situations with the curriculum around the freshman theme emphasizing relationships and raising self-awareness through literature.

"Ninth-graders need transitional materials that relate to their lives," he said. "They want to read something interesting and I want them to read deeply." By meeting them in the middle, he said, "We attempt to balance that rigor with relevance."

Student reaction has been overwhelmingly positive, Ward said, citing a recent survey he did of his classes. No freshman has opted out this year in his classes. Students who opt out are given an alternative assignment.

Appleton officials contacted 19 other districts in the state about whether and how they use the novel. Of the 13 that responded, eight do not use it and five use it as a "choice novel" in literature circles.

While one parent in the audience said the schools should "take social agendas out of classrooms," supporters of the book saw it as an opportunity to open dialogue with students about gossip, bullying, alienation, and other issues students face every day.

"I went through a lot of these same things," in middle school, said Chris Thulien, a Valley New School senior, adding he loved the book.

"Students pay attention to books that are relevant to them," said East senior Maria Peeples, noting this book drew in kids who wouldn't normally become engaged.

In an e-mail read into the record, parent Kim Daniel agreed. "With bullying and the consequences currently in the forefront of the news, it is an excellent time to have freshmen read this book."

While Hash contended 14- and 15-year-olds are still developing their value system and really can't synthesize different messages they hear as adults can, Daniel thought this age group is particularly open minded because these students are so vulnerable entering high school, and are likely more sensitive to feelings of being victimized. Daniel also objected to one parent being "allowed to decide for all parents whether or not a book is appropriate for all students."

The committee agreed the novel is a good vehicle for teaching compassion and tolerance. While the members found the strong language an appropriate literary technique for developing characters and reaching young adult readers, it presented a dilemma for Appleton West High School Principal Greg Hartjes, a committee member.

"In school I'm constantly addressing poor language," he said, conflicted that what is allowed in a book would not be allowed if overhead by a staff member in the hallway.

Both adults and students on the committee said they think ninth-graders are mature enough to handle the language as well as other situations in the book, given what they are exposed to in the entertainment media, on the Internet and often, in real life.

"They really do already know this stuff," said Mary Moran, a community member. "I'm always amazed at how much my kids know that I wasn't aware they knew."

The last time a novel underwent a district book challenge in Appleton was in 1984. Reported in: *Appleton Post-Crescent*, October 26. □

(Chinese funded centers . . . from page 6)

Branner, of Columbia University, who was an associate professor at Maryland when it established its Confucius Institute, says he worries that the institutes impose Hanban's teaching methods and materials upon Chinese-language classrooms and give the Chinese government an opportunity to collect information on American students of Chinese descent, some of whom will go into politically sensitive work. Other experts on China and Chinese-language instruction have expressed concern about whether Confucius Institutes are proliferating too quickly for Hanban to ensure high-quality instruction.

For the most part, however, such institutes are widely viewed by the colleges that have them as meeting an educational need that was unlikely to be filled any other way. Reported in: *Chronicle of Higher Education* online, October 17. □

(censorship dateline . . . from page 14)

fair to protest the blacklist. Censorship is widespread across the Middle East and journalists often face tight controls. In

much of the region, authors must receive official permission before their work can be published.

"The situation is chaotic. There are no laws with which to argue. We don't know what criteria the government uses to ban books," explained Qais Bougammaz, an activist at the protest. Inside the fair, crowds browse the hundreds of books stands exhibiting a range of mostly Arabic books including cookbooks, children's books, novels, computer instruction manuals and religious texts. But some more racy titles were not blocked by censors, including an Arabic translation of Stephanie Meyer's vampire best-seller *Twilight*. Reported in: *Kuwait Times*, October 16. □

---

from the bench . . . from page 20)

audiovisual materials disclosed to the government. Citizens are entitled to receive information and ideas through books, films, and other expressive materials anonymously. …The fear of government tracking and censoring one's reading, listening, and viewing choices chills the exercise of First Amendment rights."

According to the lawsuit filed by Amazon in April, NCDOR issued a request to Amazon for the purchase records from August 2003 through February 2010 of customers with a North Carolina shipping address as part of a tax audit of Amazon. Amazon provided NCDOR with product codes that reveal the exact items purchased – including books on the subjects of mental health, alcoholism and LGBT issues – but withheld individually identifiable user information that could be linked back to the individual purchases, including names and addresses. NCDOR refused to agree that it is not entitled to such information, leading to the lawsuit.

Aden Fine, staff attorney with the ACLU Speech, Privacy and Technology Project, called the decision "a victory for privacy and free speech on the Internet. Disclosing the purchase records of Internet users to the government would violate their constitutional rights to read and purchase the lawful materials of their choice, free from government intrusion, and undermine the very basis of American democracy and our cherished freedoms. With this ruling, the court emphatically reemphasized what other courts have found before – that government entities cannot watch over our shoulders to see what we are buying and reading." Reported in: ACLU Press Release, October 26. anonymity and privacy. The ruling came in a lawsuit originally brought by Amazon to stop the North Carolina Department of Revenue (NCDOR) from collecting personally identifiable information about customers that could be linked to their specific purchases on Amazon. □

(is it legal . . . from page 28)

which they say is a new level of screening.

Unlike metal detectors, body scanners can detect objects made with other materials, like plastic and ceramic. They are designed to identify explosives, like the type used by UmarFarouk Abdulmutallab, a Nigerian accused of trying to blow up a transcontinental airliner over Detroit last Christmas. The scanners cannot detect all explosives, however.

"While you're spending that much time on Sikh Americans, who have absolutely no incidents of terrorism in the country, other people are getting through," Jasjit Singh said.

Sikhs and TSA officials previously worked out a protocol for removing turbans in private. "In our faith, it's the equivalent to being forced to be naked, effectively," Singh said. Reported in: *New York Times*, November 7.

Harrisburg, Pennsylvania

Pennsylvania's Office of Homeland Security has been tracking groups engaged in lawful, peaceful protests, including groups opposed to natural gas drilling, peace activists and gay rights groups. An embarrassed Gov. Ed Rendell, who said that he had been unaware of the program until he read the newspaper, issued an immediate order to halt it. It turns out the Homeland Security office or its private consultant were doing more than just monitoring law-abiding citizens.

They were comparing environmental activists to Al-Qaeda. They were tracking down protesters and grilling their parents. They were seeking a network of citizen spies to combat the security threats they saw in virtually any legal political activity. And they were feeding their suspicions not only to law enforcement, but to dozens of private businesses from natural gas drillers to The Hershey Co.

Internal e-mails from the Homeland Security office reveal a determined effort to recruit local people receiving its intelligence bulletins—municipal police chiefs, county sheriffs, local emergency management personnel—into its network of citizen spies. The goal was to get those locals to start feeding information to the Institute of Terrorism Research and Response, a private "intelligence" contractor working with the state's Homeland Security office.

ITRR'S contract expired in October and, following the revelations in September, Rendell ordered it not to be renewed. The governor declined to fire the office's director, but he resigned a few weeks later. State lawmakers held a single hearing on the tracking of these groups. Some want more answers.

And while the state's contract with ITRR was not renewed, the programs continue. ITRR continues to monitor

law-abiding citizens for its corporate clients. The Pennsylvania State Police is hiring five new analysts for its Criminal Intelligence Center to take over the role of identifying threats to critical infrastructure.

Using the State Police is "a better avenue," said Rep. Daryl Metcalfe (R-Butler), whose own rallies were listed in the intelligence bulletins as a "moderate threat."

"At the same time, as they move these operations in-house, they need to ensure checks and balances are in place," he said.

From the very first page of the very first bulletin published by Homeland Security, ITRR focused not on groups with a clear terrorist agenda such as Islamists or Neo-Nazis, but on political activists.

The contractor argued that even though groups are non-violent, they can conduct "demonstrations and campaigns that can close down a facility and embarrass a company."

Regular readers of the bulletins could easily begin to view activists as a threat. The bulletins freely mixed references to actual terrorist activity abroad with warnings about the non-violent, lawful activities of Pennsylvania citizens.

A July 30 bulletin that discusses "jihadist threats in France" quoting Al-Qaeda, also warns that natural gas drilling events "may draw unruly crowds." The bulletin warns of "flashpoints for confrontations over natural gas drilling" and provides a list of meetings "singled out by anti-drilling activists." The list includes township supervisors meetings, county commissioners meetings and a possible Pennsylvania Forestry Association meeting in Mechanicsburg. The bulletins also freely label activist groups to make them sound menacing—sometimes inconsistently.

The July 30 bulletin claims that "areas of significant drilling activity in Pennsylvania have also been the scene of eco-terrorist vandalism to drilling equipment." It warns local law enforcement agencies to "remain aware of the potential for large, sometimes hostile confrontations between landowners, anti-drilling environmentalist militants and gas drilling employees."

The very first bulletin mentions a planned training for anti-drilling activists in Ithaca, N.Y. by "The Ruckus Group"—actually the Ruckus Society, founded in 1995 by former Greenpeace activists. That bulletin said "training provided by the Ruckus Group does not include violent tactics." However, the next bulletin suddenly changes tack, calling the group a "non-profit entity providing training to anarchists in methods of destroying gas pipelines."

"They're not focused on illegal activity—they're focused on people organizing, and clearly everybody's in bed with the drilling industry," said Witold Walczak, legal director for ACLU of Pennsylvania. "It's one thing for private industry to hire groups like ITRR to gather information, but for the government to get involved—you've got a nasty menage-a-trois going on here and the citizen activists are the ones getting fracked."

How did the leaders at ITRR view legal political activity? In a May 3 e-mail sent to Powers, ITRR co-founder Mike Perelman wrote: "The Internet is an incredible force multiplier—example: I doubt that the Rainforest Action Network or the Ruckus Group number more than 25 people each. But they have incredible reach, sophistication, and influence on local groups." Perelman immediately followed with this description: "Shades of Al Qaeda!"

Former Office Director James Powers was suspicious that political activism equaled drug dealing. On August 25, he e-mailed Perelman saying, "Somewhere out there is a nexus between the drug traffickers and those criminals desiring to harm us—whether at the local level or organized, home-grown, splinter-cell would-be terrorists. Have our analysts uncovered any indication of drugs and all the protest group activities they've been reporting?"

Perelman responded, "I don't think we'll see much organized drug activity from the anarchist/eco groups. Not because they're clean, but because they're paranoid. They know they're always one step away from 'police repression.'"

He added that ITRR had not been looking for connections with the drug world, but, "We could try and tease out some information if we started with a couple PA trafficker names to track and cross reference through our database and live communications."

In August, as the time drew near for ITRR's contract renewal, Powers shifted the planning for a network of citizen informants into high gear. He sent a long e-mail to his "ITRR Colleagues" entitled "The Missing Piece—Input from the Field." Powers told ITRR, "We are extremely pleased with the product ITRR has developed/delivered thus far—a superb job by all involved—whoever they are!"

He continued, "The piece that we still miss, however—and have no ability or authority to fix—is the input from the ground-level stakeholders here in PA."

At a state Senate hearing, Powers testified, "We never targeted groups. We never targeted individuals." But they did.

One young man was listed by name in a Homeland Security bulletin—part of a two-page analysis of how terrorists make maps of Closed Circuit Television (CCTV) cameras. "Like career criminals, terrorists of all kinds often carry out pre-operational surveillance to determine, among many other things, the location and number of CCTV surveillance cameras in their target location," the bulletin said.

It reviewed the case of a "suspected anarchist terrorist" with such a map killed in Greece, and describes other "anarchist" CCTV mapping activities in the U.S., Canada and Britain. Noting that much of the mapping is done

through Freedom of Information requests, the bulletin then highlighted a Pennsylvania example:

"Pennsylvania Revolution—a website self-described as 'inspired by the ideas of individual freedom, personal liberty and the constitution of the commonwealth and of the United States.'" The bulletin explained that since August 2009, the Pennsylvania Revolution website had been attempting to map all the known CCTV cameras in Pennsylvania and already lists the location of over 400, including Lancaster City and PennDOT traffic cameras. The bulletin then identified the owner of the site: Scott Davis.

Davis, a 28-year-old resident of Lower Paxton Township is a conservative organizer. He is a Tea Party activist and former state coordinator for Ron Paul's presidential campaign. He is also a systems engineer in the information technology department of *The Patriot-News*. He never guessed that mapping the publicly-available locations of CCTV cameras would brand him a potential terrorist.

"Anyone who knows me knows I'm not a terrorist," he said. "In my research in the Founding Fathers and the Constitution, I believe the country has turned for the worse—and this is proof."

Davis fears his association in the bulletin with violent terrorism could be used against him in any number of ways—future job employment, local police scrutiny, in court. "Until it happens, you don't know what the outcome would be," he said. He said his first concern was his 2-year-old daughter, and noted that corporations—including health care companies—were on the client list for the bulletins.

"What Powers doesn't get is that simply being named in a bulletin that discusses terrorist activity and that's put out by an agency with 'Homeland Security' in the name, tarnishes the people people being discussed, even if nothing bad is said about them," said Walczak of the ACLU. "It's really guilt by inclusion."

"I consider it defamation of character," said Davis. "I've never broken the law aside from a few speeding tickets."

Although Scott Davis did not experience retribution as a result of being named by Homeland Security, it appears that another young man did.

Alex Lotorto, a 23-year-old living in Pittsburgh, sent an email to friends just before 7 p.m. on June 1, asking them to meet him that night on the Carnegie Mellon campus. He hoped to organize a demonstration as President Obama visited the school the next day.

Three hours later, Perelman sent Powers a copy of the message, with Lotorto's name and cell phone number. Powers immediately forwarded it to a host of law enforcement contacts in Pittsburgh and at the FBI.

On the opposite side of the state, Lotorto's 57-year-old mother, Alexandria, opened the door of her Pike County home to find two State Police officers demanding to know the whereabouts of her son. "They said Pittsburgh police commanded them to find out where this Alex Lotorto was right now," she explained.

"I said, 'He's in Pittsburgh …. and he's probably trying to get President Obama's attention by holding up a sign. That's what he does. He's been doing it for years.'

"My son is a very passionate young man," said Lotorto. She described Alex as a gifted student and a former choir boy with "a strong sense of fairness." Lotorto said the officers were young and "very aggressive" at first. "They were behaving as if they only had minutes to find him …. like he was on the grassy knoll," she said.

They told her when someone threatens the President, they have to act quickly. That upset Lotorto, who was recuperating from quadruple by-pass surgery. She said she told the officers her son was "holding a sign, and that's every American's right."

"Alex is 25 percent Lebanese because of me," she said. "That doesn't make him an Arab threat. He doesn't know anything about the culture and he hates the food …. His father and I are good citizens. Good Christians." Lotorto told the officers, "This is a form of harassment."

But she also invited them into her home, sat them down and talked with them for 20 minutes or so. She said, in the end, they called Pittsburgh in her presence and told officials there to lay off the kid.

Her son sees it a bit differently. He thinks the police were sent to his mother as a way of putting pressure on him. "They know I live (in Pittsburgh) …. Why would they go to Mom's house?" he asked.

Lotorto acknowledged that he calls himself an anarchist, but adds he has never been in a group that planned any violence. "I believe in people power more than government or corporations," he said, "but it has come to the point where anyone who actively takes a position that challenges power …. you're a terrorist."

His mother—who said she once protested the war in Vietnam—is proud of him, despite some of the "crazy" things he's done. "We try to reason with him," she said. "When you're in your 20s, you know it all, and your parents are kind of dumb …. but I wish more of our youth were as passionate as he is. There'd be some changes in how things are. I'm disgusted they're spending money following Alex when there are all these creeps blowing things up," she said.

Mike German, a former FBI agent who quit to work for the American Civil Liberties Union, said the government is wasting time and money following the activities of Americans who are breaking no laws.

"After 9-11 there was an erosion of the rules and guidelines that were built to protect Americans' privacies, because there was this mistaken idea that it was the rules that made it hard for the FBI to find the bad guys," he said. "But what we're finding is that when you take away the rules, then what happens is that innocent people get spied on."

The U.S. Department of Justice recently released a report critical of the FBI spying on law-abiding citizens, including in Pittsburgh. "When you look at all these cases it's a complete waste of resources," said German. "These rules weren't designed just for privacy; they also were for keeping these agencies focused on their mission. It was the erosion of these rules that opened the door to this kind of political spying," he said. "The agents targeted these groups because they didn't like them."

When the scandal first broke, ITRR released selections from its past bulletins that were redacted "to protect client privacy." Comparing those to the full reports reveals that ITRR considered Monsanto, Koch Industries and Massey Energy among its clients.

Pennsylvania's Homeland Security Office distributed its bulletins to private businesses as well. Among the more than 2,000 email addresses of potential recipients disclosed during a Senate investigation was a list of 733 contacts considered to be the "Pennsylvania Intelligence Community."

That category included email addresses for people at The Hershey Co., Gannett Fleming, Bayer, Dennis McGee and Associates, Highmark, Tyco Electronics, Harsco Corp., PSECU, Eastman Chemical, and Rite Aid. There was a separate category of 42 contacts for the "Marcellus Shale Community." Most of them are county emergency management contacts, but some at the Marcellus Shale Coalition (a trade group), are individual drilling companies and a lobbying firm.

Whether Powers considered the business benefits of ITRR's "intelligence," he had become convinced that the information in the bulletins was critical to law enforcement. Powers spent the summer refashioning the bulletins—editing them heavily—to make them more "user friendly" to people "in the field."

In an interview the day before Rendell read about the program and halted it, Powers was clearly proud of that effort. Comparing himself to the Tommy Lee Jones' character in the film "The Fugitive," Powers said, "I don't care" which side of the issue someone is on—or if they're innocent. "My concern is public safety."

"I wrote (the bulletins) and tailored (them) for the guy on the ground who has a three-person police force, and a volunteer fire force and a mayor who serves in two other capacities as well," Powers testified during the Senate hearing. "It was not about terrorism. It was about all hazard situational awareness. Nobody ever called these groups terrorists or threats."

"None of that makes any sense to me at all," Senator Kim Ward, a Republican from Westmoreland County, told Powers. "That we would go monitor private citizens and private groups and they're not a threat to us …. it's just for awareness. It makes absolutely no sense, and it does make me think, 'Where are we living?' " Reported in: *The Patriot-News*, November 7.

Internet

Washington, D.C.

Robert S. Mueller III, the director of the Federal Bureau of Investigation, traveled to Silicon Valley November 16 to meet with top executives of several technology firms about a proposal to make it easier to wiretap Internet users.

Mueller and the FBI's general counsel, Valerie Caproni, were scheduled to meet with senior managers of several major companies, including Google and Facebook, according to several people familiar with the discussions. How Mueller's proposal was received was not clear.

"I can confirm that FBI Director Robert Mueller is visiting Facebook during his trip to Silicon Valley," said Andrew Noyes, Facebook's public policy manager. Michael Kortan, an FBI spokesman, acknowledged the meetings but did not elaborate.

Mueller wants to expand a 1994 law, the Communications Assistance for Law Enforcement Act, to impose regulations on Internet companies. The law requires phone and broadband network access providers like Verizon and Comcast to make sure they can immediately comply when presented with a court wiretapping order. Law enforcement officials want the 1994 law to also cover Internet companies because people increasingly communicate online. An interagency task force of Obama administration officials is trying to develop legislation for the plan, and submit it to Congress early next year.

The Commerce Department and State Department have questioned whether it would inhibit innovation, as well as whether repressive regimes might harness the same capabilities to identify political dissidents, according to officials familiar with the discussions.

Under the proposal, firms would have to design systems to intercept and unscramble encrypted messages. Services based overseas would have to route communications through a server on United States soil where they could be wiretapped. Reported in: *New York Times*, November 16. □

intellectual freedom bibliography

Compiled by Angela Maycock, Assistant Director, Office for Intellectual Freedom

Berners-Lee, Tim. "Long Live the Web: A Call for Continued Open Standards and Neutrality." *Scientific American.* November 22, 2010. http://www.scientificamerican.com/article.cfm?id=long-live-the-web (accessed December 13, 2010).

France, Erin. "If Book Offends, Libraries Adapt." *Atlanta Banner-Herald.* October 2, 2010. http://www.onlineathens.com/stories/100210/new_714686064.shtml (accessed December 13, 2010).

Gopnik, Blake. "National Portrait Gallery Bows to Censors, Withdraws Wojnarowicz Video on Gay Love." *The Washington Post.* November 30, 2010. http://www.washingtonpost.com/wp-dyn/content/article/2010/11/30/AR2010113006911.html (accessed December 13, 2010).

Kwasnik, Greg. "Parents Outraged Over Finance Class Reading." *New Hampshire Union Leader.* December 7, 2010. http://unionleader.com/article.aspx?articleId=a9e54470-9958-4bae-a865-41186cdf2e18 (accessed December 13, 2010).

Listoe, Alana. "Hundreds Attend Book Hearing." *Helena Independent Record.* December 3, 2010. http://www.plano-star.com/articles/2010/11/18/plano_star-courier/news/447.txt (accessed December 13, 2010).

Livingston, Layron. "Book Controversy in Quitman." *KLTV 7 News.* November 16, 2010. http://www.kltv.com/Global/story.asp?S=13515676 (accessed December 13, 2010).

Rosen, Jeffrey. "The TSA Is Invasive, Annoying – and Unconstitutional." *The Washington Post.* November 28, 2010. http://www.washingtonpost.com/wp-dyn/content/article/2010/11/26/AR2010112604290.html (accessed December 13, 2010).

Tang, Didi and Mary Beth Marklein. "Those Challenging Books Find Strength in Numbers." *USA Today.* December 6, 2010. http://www.usatoday.com/news/education/2010-12-01-book-bans01_ST_N.htm?loc=interstitialskip (accessed December 13, 2010).

Walsh, Sean Collins. "Seattle School Board Postpones Decision on Pulling 'Brave New World.'" *The Seattle Times.* November 17, 2010. http://seattletimes.nwsource.com/html/local-news/2013460397_braveworld18m.html (accessed December 13, 2010).

Williams, Kim. "PISD Sticks with Policy on Textbook." *Plano Star-Courier.* November 18, 2010. http://www.planostar.com/articles/2010/11/18/plano_star-courier/news/447.txt (accessed December 13, 2010).

Wyatt, Edward and Tanzina Vega. "F.T.C. Backs Plan to Honor Privacy of Online Users." *The New York Times.* December 1, 2010. http://www.nytimes.com/2010/12/02/business/media/02privacy.html (accessed December 13, 2010).

NEWSLETTER ON INTELLECTUAL FREEDOM
50 East Huron Street • Chicago, Illinois 60611