newsletter on intellectual freedom

IFC ALA

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Judith Krug honored and remembered at FTRF 40th anniversary

On July 12, the Freedom to Read Foundation held a gala dinner celebrating its 40th anniversary. At the dinner Judith F. Krug, the Foundation's founder and Executive Director, as well as Director of the ALA Office for Intellectual Freedom until her untimely death in April, was honored with the Foundation's first Founder's Award, presented by noted children's author Judy Blume, and with the William J. Brennan Award for Free Expression, presented by Robert M. O'Neil, Director of the Thomas Jefferson Center for Free Expression. A public memorial service was also held on July 10 at the Hyatt Grand Regency Hotel in Chicago as part of the ALA Annual Conference.

FTRF Board President Judith Platt told the hundreds of attendees at the FTRF gala: "Of the personal and professional joys of my working life, I would put the collaborative trust and love that developed between Judith Krug and myself at the top of the list.

"When authors and librarians and booksellers and publishers stand together in defense of free expression, we are unstoppable," declared Platt, also director of the Association for American Publishers' Freedom to Read program, "and we send the book burners back to their dark little holes with their tails between their legs.

"If we are diminished by Judy's death, we are enriched by her legacy," Platt said. "The only way to truly honor her legacy is to continue this work with all the courage we can muster."

Krug's daughter, Michelle Litchman, accepting the Brennan award, acknowledged the similarities between herself and her mother, but also noted that she and FTRF shared a common year of birth. Only her mother, she said, could have a baby and create FTRF in the same year.

Litchman said she had been visiting her mother weekly after Krug's cancer returned and, on one of those days, the call from O'Neil about the Brennan award came. Her mother, she said, had tears running down her face. "She was rendered speechless," Lichtman reflected. "If you knew my mom well, that was quite an accomplishment indeed."

Author Blume presented FTRF's posthumous Founder's Award to Krug's husband, Herb. "The plan of course was that I would present this award to Judith in person," Blume told the group. "'Don't worry about me,' she said last fall. 'I'm way too mean to die.'"

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J. Douglas Archer, Chair

in this issue

targets of the censor

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periodicals

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Brennan Award given to Judith Krug

The following is the text of remarks delivered at the Freedom to Read Foundation's 40th Anniversary Gala in Chicago, July 12, by Robert M. O'Neil, Director of the Thomas Jefferson Center for Free Expression at the University of Virginia, who presented the Center's fifth William J. Brennan Award posthumously to Judith Krug, the late founder and Executive Director of FTRF, director of the ALA Office for Intellectual Freedom, and founding editor of the Newsletter. The Brennan Award, given to a person or group for demonstrating commitment to principles of free expression, has been presented only five times since 1993, with Krug its only posthumous recipient.

It is a great honor to join you for this purpose tonight—much as I had hoped this presentation would be person to person. When I called Judith last December to convey the good news, she was delighted, and we began planning a celebration. She was impressed that trustees of our Center as varied as Brit Hume, Sissy Spacek, Dahlia Lithwick and Norman Dorsen agreed she was indeed the person who most clearly deserved the highest honor we confer.

This is the fifth time we have presented an award in the name of Justice Brennan, who surely has no peer among judges in protecting freedom of speech and press. Sadly, this is the only time our honoree has not been able to attend a ceremony at the Supreme Court—twice hosted by Justice Brennan himself and twice by Justice Ginsburg, who assumed this task in recent years. There wasn't the slightest doubt that either of them would have relished honoring Judith Krug had that been possible.

There is one notable tie between Justice Brennan and Judith Krug of which many may not be aware. During the time (46 years ago) that [Richard] Dick Posner [Judge on the U.S. Court of Appeals for the Seventh Circuit] and I were Justice Brennan's clerks, he asked us to help him with only one non-judicial task. He had been invited to speak at the 75th anniversary of the Newark Public Library; like Philip Roth and others in later times, a young Bill Brennan devoted many hours to shelving and retrieving books in that formidable structure. He was delighted by the invitation because he saw a rare chance to apply First Amendment principles to libraries.

He cautioned, as Dick and I soon discovered, that there was no relevant case law on that subject. Yet much of what he had written in his opinions, and had declared in other lectures, readily met this specific need. Not surprisingly, the speech was a great hit in downtown Newark, but got regrettably little attention elsewhere. Then as now, what happens in Newark tends to stay in Newark. It seemed

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privacy in an era of change

The following is the text of remarks delivered at a program on "Privacy in an Era of Change" co-sponsored by the ALA Intellectual Freedom Committee and the ALA Committee on Legislation at the 2009 ALA Annual Conference in Chicago on July 13. Speakers at the program were Craig Wacker, Program Officer for the Digital Media Learning Initiative at the MacArthur Foundation; Mary Callahan, Chief Privacy Officer of the Department of Homeland Security; and David Sobel, Senior Counsel for the Electronic Frontier Foundation.

remarks by Craig Wacker

Craig Wacker is Program Officer for the Digital Media Learning Initiative at the MacArthur Foundation.

I work in a portfolio for the MacArthur Foundation, which is called Digital Media Learning. The portfolio was launched about three years ago and it is focusing essentially on how digital media changed the way people learn, play, socialize, and participate in civic life more generally. Just a few minutes ago, in talking with the other panelists, it was decided that I should go first, since I am probably the most benign of the three panelists. And the other two are going to go mano-a-mano for the rest of the time. But, in all seriousness, what I want to set up for you in the next ten minutes is the landscape of privacy issues as they relate to youth media.

We are just starting to get into the policy realm, and I think we're very early in the conversation. I come into this conversation hoping I can get something out of it as well: to help develop our strategy as well as the way we are thinking about these issues. One of the fundamental questions about digital media and one of the things that I think animates our portfolio is why, in fact, focus on social media?

It's intuitive to think that social media are in fact pervasive in young people's lives, and the research is certainly revealing that. Last year we supported the Pew Internet and American Life project survey on adolescent gaming that revealed that 97% of adolescents play some sort of digital game. This year Nielsen Online came out with statistics that show that within the 2–11 age bracket over the last 5 years, we've seen a 63% increase in the amount of time spent online. So we're obviously in the midst of a social transformation and that social transformation is, at its leading edge, happening within the youth population.

So what are some of the questions we're focusing on in the context of social media? We want to learn more, essentially, about how young people are actually incorporating digital media into their daily lives. There are questions like: how is technology changing the way young people reason

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IFC report to ALA Council

The following is the text of the ALA Intellectual Freedom Committee's report to the ALA Council, delivered by IFC Chair J. Douglas Archer, at the ALA Annual Conference in Chicago on July 15.

The ALA Intellectual Freedom Committee (IFC) is pleased to present this update of its activities.

JUDITH F. KRUG, 1940–2009

Judith devoted her whole professional life to the advocacy of one of our profession's core values, intellectual freedom. In fact, I believe, as I am sure she believed, that it is THE core value of librarianship. Judith has been its most vigorous, creative, persistent, and effective advocate for the past forty years.

She founded the Office for Intellectual Freedom and later the Freedom to Read Foundation; initiated "Banned Books Week"; and developed the first *Intellectual Freedom Manual*.

Judith tirelessly defended intellectual freedom and American libraries in every imaginable forum. She testified effectively before Congress and the courts, was interviewed countless times (often at the drop of a hat) by local and national media, debated potential censors from the right, left, and middle—always staying on point and in control. She made herself available to all manner of national, state and local library organizations as speaker and resource person. She had a hand in almost every Supreme Court case of the past four decades that touched upon libraries and the freedom for people to read, view, or hear what they would—usually successfully. Along the way she recruited and inspired uncounted new recruits to the cause of intellectual freedom.

For those who wish to sustain Judith's work and legacy, the Freedom to Read Foundation has established the Judith F. Krug Memorial Fund. Donations to the fund may be made online at www.ftrf.org, or sent to FTRF, 50 E. Huron, Chicago, IL 60611.

INFORMATION

Frontlines Intellectual Freedom Series

ALA Editions published the first two volumes of the new Frontlines Intellectual Freedom book series, *Protecting Intellectual Freedom in Your Academic Library*, by Barbara Jones, and *Protecting Intellectual Freedom in Your School Library*, by Pat Scales. Both books contain an introduction to intellectual freedom and more specific materials such as case studies that address the practical application of intellectual freedom principles in particular library settings. The case studies illustrate and teach particular concepts, describe a set of facts, and include a discussion of the applicable intellectual freedom principles. Supplemental materials accompanying each case study provide useful tips, guidelines, sample policies, definitions of key terms, and analysis of important statutes and legal decisions.

Publication of the third and final installment in the series, *Protecting Intellectual Freedom in Your Public Library*, by June Pinnell-Stephens, will coincide with the 2010 Annual Conference.

Censorship Issue in West Bend, Wisconsin

As you may be aware, a challenge to library materials for young people in West Bend, Wisconsin, has drawn national media attention. This controversy, the result of an organized campaign aimed directly in opposition to ALA's foundational intellectual freedom policies, raises significant issues for the IFC to consider and address.

The controversy arose in February, 2009, when a West Bend married couple filed a request to reconsider books included in the library's "Out of the Closet" bibliography aimed at youth interested in GLBT issues as well as books deemed "sexually explicit." Over the following weeks and months, the couple helped to form a citizens' group, West Bend Citizens for Safe Libraries, and circulated a petition asking the library to move particular young adult books to the adult section, label certain material as objectionable, and restrict access to categories of online content. A second citizens' group, West Bend Parents For Free Speech, was formed to oppose the requested restrictions and to support the library's existing policies. A third organization, the Christian Civil Liberties Union, eventually filed a claim with the City of West Bend, asserting that the library had injured them by placing the YA novel *Baby Be-Bop* in the library's collection. This group requested monetary damages and demanded that *Baby Be-Bop* be publicly burned, "as a deterrent to repeating this offensive conduct." In June 2009, the West Bend Library Board voted unanimously to retain the books, "without removing, relocating, labeling, or otherwise restricting access."

On Monday, July 12, 2009, at ALA's Annual Conference, five panelists from West Bend participated in a program as part of the IFC's regular Issues Briefing Session. These speakers—librarians, trustees, and community members directly involved with the challenges—discussed their experiences and their plans to continue the ongoing work of maintaining unrestricted access to information for everyone in their community. They identified several emerging areas of concern:

- The role of bloggers, social networking tools, and the media in fanning the flames of the controversy;
- The involvement of out-of-state censorship advocates and organizations, and the use of uniform tactics and strategies by groups bringing similar challenges in other

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FTRF report to ALA Council

The following is the text of the Freedom to Read Foundation's report to the ALA Council, presented by FTRF President Judith Platt at the ALA Annual Conference in Chicago

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2009 Midwinter Meeting:

JUDITH F. KRUG, 1940–2009

We deeply miss our founding executive director and secretary, Judith F. Krug. Her death has been difficult to come to terms with. Judith was so many things to us: a devoted leader; a fierce advocate for intellectual freedom and the First Amendment; a generous mentor and teacher; and a loyal friend whose sense of humor informed all that she did.

Judith had an abiding faith in the power of "the community of the book." She was convinced that when librarians, publishers, booksellers, and authors stand together in defense of intellectual freedom we are unstoppable. She believed in our obligation to take on that fight wherever and whenever it arose, and more often than not she led the charge.

In the aftermath of Judith's death there has been an outpouring of countless tributes from her friends and colleagues, many of which can be found at www.ftrf.org. Her remarkable life and legacy have been memorialized by the *New York Times*, CBS News, NPR, the *Huffington Post*, the *Chicago Tribune*, *Library Journal*, and scores of other newspapers, blogs, and magazines. She was featured on the cover of the May 2009 *American Libraries*. Additionally, the July issue of the *Newsletter on Intellectual Freedom* is dedicated to remembering Judith's career.

For those who wish to sustain Judith's work and legacy, the Freedom to Read Foundation has established the Judith F. Krug Memorial Fund. Donations to the fund may be made online at www.ftrf.org, or sent to FTRF, 50 E. Huron, Chicago, IL 60611.

40TH ANNIVERSARY GALA CELEBRATION

Judith's absence was most keenly felt at the Freedom to Read Foundation's 40th Anniversary Gala on Sunday, July 12, 2009, which took place in the new Renzo Piano-designed Modern Wing of the Art Institute of Chicago. The gala celebrated FTRF's forty years of defending the First Amendment on behalf of the American Library Association, and provided a wonderful opportunity to celebrate and honor the accomplishments of Judith Krug and the McCormick Freedom Museum.

Featured speaker Scott Turow spoke eloquently about the right to read and the value of literature, while author Judy Blume touched everyone with her favorite memories of Judith Krug as she presented FTRF's Founders' Award posthumously to Dr. Krug. The award was accepted by Judith's husband, Herb. ALA President Jim Rettig recognized the educational work of Chicago's McCormick Freedom Museum, and Robert O'Neil of the Thomas Jefferson Center for the Protection of Free Expression presented the William J. Brennan Award to Judith Krug in recognition of her lifetime of work on behalf of the First Amendment. Judith's daughter, Michelle Litchman, accepted the award.

The gala was a smashing success, and everyone had a lovely time in the Art Institute's galleries and soaring spaces. Special thanks and recognition for the event's success must go to FTRF trustee Robert Doyle, who oversaw the event with the able assistance of his co-chair Burt Joseph, and the dedicated work of Barb Macickas, Evelyn Shaevel, Peggy Barber, Teresa Basso Gold, John Horany, Herb Krug, and the FTRF staff. It was an honor for me to work with this creative and energetic planning group. The proceeds raised by the event will help assure the future work of FTRF.

A VICTORY FOR CIVIL LIBERTIES

I am very pleased to report that the Obama Administration's decision not to appeal a ruling by the Second Circuit Court of Appeals that places limits on the government's ability to impose a gag order when it uses National Security Letters (NSLs) has rendered the Second Circuit ruling final.

As you may recall, the Second Circuit handed down a decision in *John Doe and ACLU v. Mukasey* (formerly *ACLU v. Gonzales*), the lawsuit—in which FTRF has filed amicus briefs—challenging the constitutionality of the statutes authorizing the use of National Security Letters. The appellate court held the NSL statute unconstitutional to the extent that it imposes a gag order on NSL recipients without placing on the government the burden of obtaining judicial review of the gag order, and overturned the statutory requirement that courts treat as conclusive any claim by the government that a gag order is necessary.

The appellate court held that whenever a gag order is challenged, the government must show a reasonable likelihood of harm or criminal interference in the absence of a gag order. The burden of proof is placed on the government rather than the individual bringing the challenge. The Second Circuit also recommended that the government develop and adopt procedures to inform NSL recipients of their right to ask for judicial review. The case has been returned to the district court with instructions that the government develop procedures to implement its ruling.

Unfortunately, the government continues to assert that the gag order imposed on "John Doe" must remain in place for national security reasons. Federal District Court Judge Victor Marrero has ordered a briefing schedule that requires the government to provide justification for the gag order.

FTRF will continue to monitor this litigation.

NEW LITIGATION

An important part of the Foundation's mission is to prevent the erosion of fundamental First Amendment rights and freedoms. In a case that will be heard by the Supreme Court in its 2009/2010 term, the government is arguing that a whole category of speech can be denied First Amendment protection based on the radical proposition that the "value" of the speech should be weighed against a compelling government

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Obama committed to network neutrality

President Obama said May 29 that the government was going to start treating the nation's digital infrastructure, broadband networks, and computers as strategic national assets that should be "open and free."

That came in announcing the release of a report on the state of the nation's cyber security, which he indicated needed to be beefed up in numerous ways (he admitted that his own campaign Web efforts had been hacked). The president pledged to protect privacy and economic security and even gave a shout-out to network neutrality, saying, "Indeed, I remain firmly committed to net neutrality so we can keep the Internet as it should be—open and free."

The new priority on cyber security will include creating an office in the White House led by a cyber security coordinator who will also be a member of the national security staff and work closely with new Chief Technology Officer Aneesh Chopra.

The president said the administration will also work closely with local government and the private sector to respond to cyber security "incidents." He also emphasized that the administration will not "dictate" security policy to the private sector: "On the contrary; we will collaborate with industry to find technology solutions that ensure our security and promote prosperity."

He said the administration had no intention of monitoring private Internet traffic: "Let me also be clear about what we will not do. Our pursuit of cyber security will not—I repeat, will not—include monitoring private sector networks or Internet traffic. We will preserve and protect the personal privacy and civil liberties that we cherish as Americans."

The president said the country will continue to invest in infrastructure, "laying broadband lines to every corner of America." The president's economic stimulus package includes over $7 billion in broadband rollout grants and loans.

Verizon senior VP of government relations, Peter Davidson, said the company was willing to work with the president on beefing up cyber security, pointing out that it helped the administration with the top-to-bottom review that resulted in the announcement.

"We are pleased that cyber security is a priority for the Obama Administration, and we are committed to working with the president on this important issue," he said in a statement. "Working together in a collaborative fashion, government and industry can better ensure that America's information and communications infrastructure is trusted, resilient, and secure."

"We certainly agree that effective solutions will require constructive public-private engagement and look forward to working with whoever is appointed," said Walter McCormick, Jr., president of US Telecom, the association representing telco broadband providers and manufacturers.

Senate Commerce Committee Chairman Jay Rockefeller (D-WVA) and ranking member Olympic Snowe (R-ME) applauded the announcement, and advised the president to put no layers of bureaucracy between his cyber security czar and the Oval Office.

"We strongly urge the President to follow through on his groundbreaking leadership on this issue by giving this 'cyber czar' the heft and authority the position requires," they said in a statement. "[T]his advisor should report directly to the President on all cyber matters. There is no room for error, and no room for bureaucratic turf battles. We need to act now—the time to combat cyber terror was yesterday."

The Computer & Communications Industry Association, which represents computer companies including Google, Yahoo!, Microsoft, eBay, and Oracle, was pleased with the shout-out for network neutrality.

"[The President] committed to protect the Internet from those who would sacrifice the openness and freedom of the Internet for their own parochial interests when he said he 'remained firmly committed to net neutrality,'" said CCIA President Ed Black in a statement. "This makes sense in an announcement on the nation's cyber infrastructure because having Internet traffic content neutral is what everyone from the small business owners to venture capitalists Obama mentioned in his speech rely on daily to do their jobs." Reported in: Broadcasting and Cable, May 29. □

academic freedom under fire at law-school clinics

Faculty members at law-school clinics may feel pressure from their bosses to steer clear of cases that might incur the displeasure of donors, lawmakers, or others who could complicate life for their institutions, the results of a recent

survey suggest.

The survey of about 300 faculty members at law-school clinics found that nearly ten percent reported being urged by their law school's dean to avoid a particular case, and nearly fifteen percent reported having been urged by their clinic's director to avoid one. The survey, conducted by an associate dean at the University of Michigan Law School, was discussed at a conference on academic freedom held in June by the American Association of University Professors.

Faculty members were not asked why they had been urged to avoid cases, leaving open the possibility that in some situations their bosses were motivated purely by educational or financial concerns. And most respondents did not report any interference.

Yet responses to other survey questions suggest that worries about political repercussions could play a role in decisions to shy away from certain cases. Well over half of the respondents characterized their law school's dean as at least somewhat concerned with how their cases would be viewed by alumni or potential donors, and more than a fourth described their deans as caring at least somewhat about how cases are perceived by politicians, state courts, their state's bar association, and groups representing businesses or other interests.

The survey was done last year by Bridget M. McCormack, associate dean for clinical affairs at the University of Michigan Law School and a co-chair of an Association of American Law Schools panel focused on political interference in law-school clinics. McCormack has not formally published her findings, but they have been circulated among legal educators.

The survey's results shed new light on the long-running debate over the proper role of law-school clinics and the question of how much freedom their faculty members should have in their work, which often involves providing legal representation to the indigent.

Robert R. Kuehn, a professor of law at the University of Alabama and co-chair of the law-school's association's panel on political interference at clinics, said the survey's findings also serve as a caution to other academic fields that have increasingly sought to provide students with real-world experiences. "We may see more of these efforts to restrict the way students learn and what they are learning," he predicted.

Other experts on legal education argued, however, that law-clinic administrators are wise to consider the political repercussions of their clinics' work because they could end up hurting their programs and students if they fail to do so.

Kim Diana Connolly, president of the Clinical Legal Education Association and an associate professor at the University of South Carolina School of Law, said clinic administrators need to be able to take the political environments they are working in into account. "What might be a good decision for me would not be a good decision in other settings," she said.

Efforts by outsiders to restrict the work of law clinics have often attracted considerable attention, in large part because they have taken place in the public arena, in the form of legislation or litigation. In the late 1990s, for example, Louisiana officials, angered by a Tulane University environmental-law clinic's representation of opponents of a new factory, fought in state court, with considerable success, to limit the scope of law clinics' work. And in June a New Jersey mall developer tried to use a state open-records law to force a Rutgers University environmental-law clinic to give up documents connected with its representation of mall opponents.

Little attention, however, has been given to restrictions quietly imposed on the work of law clinics by their own administrators.

In addition to determining that a share of law-school-clinic administrators worry about political repercussions of certain cases and urge faculty members not to take them, McCormack's survey found that at many such clinics administrators weigh in on case selection as a matter of course, and at least a few have urged faculty members to avoid press coverage of one of their cases.

It is unclear whether such interference is becoming more or less common. Roy T. Stuckey, a retired professor from the law school at the University of South Carolina who has studied clinical legal education, said he suspected that "it is more of a problem now than it used to be" because "these schools are much more dependent on keeping donors happy than they once were."

Kuehn says the motives for interference in the work of law-clinic faculty members have evolved over time.

Like the earliest reported case—the 1968 firing of two clinical-law professors by a dean unhappy that they had taken on a school-desegregation lawsuit—most of the earlier challenges appeared driven by political or ideological concerns. More recently, he says, they have been driven by financial interests, often taking the form of business groups trying to keep environmental-law clinics from opposing their activities.

The glass-half-full take on McCormack's findings is that most faculty members at law clinics do not report interference.

Moreover, some have had their institutions' backing in the face of considerable outside pressure. Hofstra University, for example, stood behind its clinic's decision to press a housing-discrimination lawsuit against a local apartment complex whose owner was a member of Hofstra's board and had threatened to both resign from his board seat and withdraw a $1-million pledge unless the case was dropped.

Kuehn said, however, that he believed clinical faculty members did not need to be asked to drop a case to feel under the gun to do so. Just being asked by a dean to explain their decision to take on a case "can be perceived as pressure, particularly by junior faculty or those serving at the

dean's pleasure," he said.

Richard A. Matasar, dean of the New York Law School and president of the American Law Deans Association, said that he personally saw law clinics' case selections as involving "many shades of gray," and that he thought administrators were justified in discouraging faculty members from taking a case if another with less potential political fallout offered the same teaching opportunities.

"Judgment is always an important part of these discussions," he said. "For me, the tiebreaker always is: What is the best vehicle for teaching what we have to teach the students?" Reported in: Chronicle of Higher Education online, June 15. □

website tracks world online censorship reports

When Shanghai blogger Isaac Mao tried to watch a YouTube clip of Chinese police beating Tibetans, all he got was an error message. Mao thought the error—just after the one-year anniversary of a crackdown on Tibetan protesters in China—was too suspicious to be coincidental, so he reported it on a new Harvard-based Web site that tracks online censorship.

Meanwhile, more than 100 other people in China did the same thing. The spike in reports on Herdict.org in March pointed to government interference rather than a run-of-the-mill technical glitch, even before Google Inc. confirmed China was blocking its YouTube video-sharing site.

"We saw reports coming in as soon as the blocks were happening and certainly before any of the media were reporting it," Herdict founder Jonathan Zittrain said of the months-long YouTube blackout that coincided with the 20th anniversary of the Tiananmen Square demonstrations in June and recent ethnic riots in the Xinjiang province.

Herdict users report their Web site problems anonymously—numeric Internet addresses are recorded but only general location is displayed—so people can post more freely, encouraging reports about sensitive topics like HIV and AIDS-related sites and from people in countries with possible government repercussions.

The site doesn't investigate reports, though, so there's no way to know for sure that an outage is related to government meddling rather than a cut cable or other problem unrelated to censorship. Although surges in reports do suggest a government role, a widespread technical glitch can also produce a similar spike.

Web site inaccessibility can also result from network or server errors, firewalls at schools or offices or a new phenomenon called reverse filtering, in which companies block access to copyright-protected material outside a specific country.

Zittrain, law professor and co-founder of Harvard's Berkman Center for Internet and Society, said Herdict does not aim to present a flawless picture of online filtering, but to let patterns of accessibility speak for themselves.

"The goal . . . is to gather the kind of raw data from which people can then start to gain insight and come to conclusions," he said. "With enough people asking, you start to get a sense of where there are blockages in the network."

Herdict—short for "verdict of the herd"—has spread beyond techie circles to garner users in more than 140 countries, including censorship hotbeds China and Iran.

"Herdict has been buzzed (about) for months in China and now it's becoming more popular since . . . Google.com was blocked for hours and Twitter.com was blocked twice recently," Mao said in an e-mail.

In Iran, Herdict users have logged unsuccessful attempts to access Twitter and other social-networking sites that have been blocked since the country's controversial June 12 presidential election.

Herdict users like that the site fosters a sense of community among those who can't fully navigate the Web and provides them with hope for a freer Internet. "It gives people a sense how many people share the same blackout regionally or globally," Mao said. "You are not alone."

Before, someone might complain about a block via a single Facebook or Twitter update, but that information often doesn't go beyond a small group of friends.

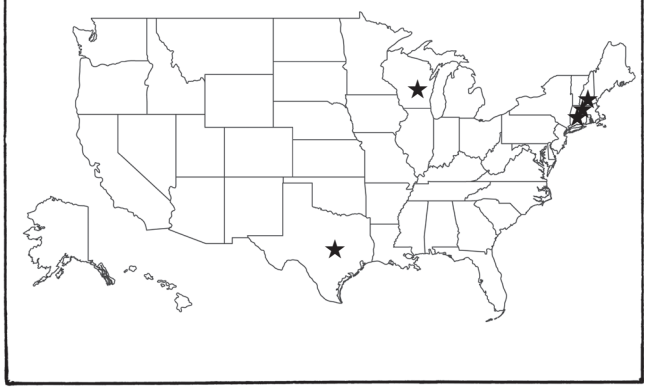
Zittrain started Herdict in February—a month before China's block began—to aggregate reports of online inaccessibility and help users detect government censorship on the Web as soon as it happens. Having tracked online censorship since the early 2000s, he wanted to put Web accessibility at the fingertips of those who use it most, rather than a handful of experts.

"The less 'online' class of people generally don't worry about it, until they run into something blocked like the BBC," said Andrew Lewman, executive director of the Boston-based circumvention tool, The Tor Project. "Then they say, 'Hey, what is this? All I want to do is read this one article.'"

The site has versions in Arabic and Chinese, and an interactive map with a roaming orange sheep to mark inaccessible Web sites.

At most, Herdict can help give people a better sense of the prevalence of censorship. "I don't think that a specific monitoring tool will specifically have censorship go away, but we'll just know about it better," said Robert Guerra, project director for the Internet Freedom Program at the Washington-based Freedom House. "It's far more pervasive than people think." Reported in: yahoo.com, August 4. □

censorship dateline



libraries

Randolph, Wisconsin

A magazine may be pulled from the Randolph High School library for its "sexual content, explicit language, and gang symbols."

Principal Tom Erdmann brought a complaint against *Vibe* magazine after a school board member raised concerns. "I found the magazine to be not appropriate for our high school," Erdmann said.

The school district's library materials review committee, made up of Erdmann, superintendent Greg Peyer, IMC director Jenanne Anderson, reading specialist Christine Frinak, and high school English teacher Tom Plahuta met in early June to discuss the complaint. Kelly VanderGalien, who serves as the parent representative of the committee, did not attend.

"The district is paying to put the magazine on the shelf," Erdmann said. "We should discontinue the subscription." Erdmann offered teen magazine *Gumbo* as an alternative to Vibe.

Frinak said she objected to removing the magazine in the interest of intellectual freedom. "I recognize that it doesn't look like a lot of people who live here," Frinak said of the magazine's content. "It is voluntary . . . it isn't instructional. I don't think high school students are too young. All students should have access to all points of view." Frinak said that removing the magazine would open up a real big can of worms. "I'm worried what's next," she said.

School board member Jana Roberts, attending the review as a concerned parent, asked if the magazine was "worse" than the swimsuit issue of Sports Illustrated, which is kept behind the counter. Roberts also said that *Vibe* is not allowed in the prison system.

"This isn't a prison," said Anderson.

Anderson said she does not want to be a censor and keeps the swimsuit edition of Sports Illustrated behind the desk for a reason. "If I don't leave it behind the desk, it gets stolen," Anderson said. Anderson said that a student came in and asked for more music magazines, and that she did research and chose *Vibe*, which was on the American Library Association's list of recommended titles for high school libraries.

"Where is it going to end?" Anderson said. "What if someone comes in and says 'I don't want that Bible on the shelves?'"

Plahuta asked if there was a middle ground that could be reached regarding the magazine. He said he only looked through a few issues of the magazine and found it to be very misogynistic. "A problem I see in school is the way male students treat female students," Plahuta said.

Peyer pointed out that the school year is almost over and the committee has the summer to resolve the issue. The committee agreed to table the issue. Anderson will contact other school librarians in the state to see if they carry *Vibe*, and look into alternative titles. Reported in: *Beaver Dam Daily Citizen*, June 3.

schools

Pelham, Massachusetts

The Pelham school district removed a novel by New Hampshire author John Irving from a list of recommended books for students to read over the summer.

After a parent complained about objectionable language and sexuality in *A Prayer for Owen Meany*, school administrators reviewed the book and decided it should not receive the district's stamp of approval, School Superintendent Frank Bass said. Bass announced the decision to the School Board July 15. The parent, whose name was not available, did not attend.

Board members said they entrusted the decision to the superintendent and his administration. "We as a board agreed to go along with the decision and to defer any comment on the subject to Superintendent Bass," board Vice Chairwoman Cindy Kyzer said. Board member Deb Ryan had little to say in response to the move other than she agrees with the decision.

Bass said he could not recommend the book as an independent reading selection when there is no teacher to serve as a "filter" over the summer, putting the book in context and directing discussion.

A Prayer for Owen Meany—the story of two New Hampshire boys growing up in the 1950s—was among ten books recommended for incoming freshmen. Their themes focus on love and friendship. Other books recommended

include *The Adventures of Huckleberry Finn*, A Separate Peace and Treasure Island.

Local English teachers and administrators assembled lists for 10th-, 11th- and 12th-graders as well. They include classics and contemporary selections, both fiction and nonfiction. Regardless of grade, students can earn extra credit for the coming school year by completing a certain number of books and journal entries on their reading. The reading program is intended to promote critical thinking, encourage creative written expression, and build lifelong reading skills.

"Students learn to better appreciate reading and literature when they can read independently at their own pace," the reading program states. "They will have the opportunity to share insightful responses to their reading in discussions and assessments during the first unit in their English classes." Reported in: *North Andover Eagle-Tribune*, July 16.

Litchfield, New Hampshire

The English curriculum adviser at Campbell High School who allowed what some parents believe to be questionable reading materials into an elective course classroom has resigned.

Kathleen Reilly, who taught English at the high school since 2000 and also served several years as the department head, submitted her letter of resignation in person on June 22, said School Superintendent Elaine Cutler. The Litchfield School Board accepted Reilly's resignation, she said.

"(Reilly's) letter states that she would like to pursue a career in elementary education," she said, adding that Reilly has past experience in that area of education. She said Reilly's letter indicated that she was interested in teaching in another school district.

Cutler, who became superintendent in November 2007, said of Reilly: "She's been a tremendous asset to the school. She was the advisor to the drama department as well and has put on several successful plays for students, and it's one of her loves," she said.

Cutler said she received several emails and phone calls from "parents expressing great regret at the loss of Mrs. Reilly in the English Department at Campbell High School."

Earlier in June, parents voiced their concerns about four books that were part of a short-stories unit called "Love/Gender/Family Unit" that dealt with subject matters including abortion, cannibalism, homosexuality and drug use. At the center of the controversy were: "The Crack Cocaine Diet," by Laura Lippman; "I Like Guys," by David Sedaris; "Survivor Type," by Stephen King; and "Hills Like White Elephants," by Ernest Hemingway.

In a June 19 email to a reporter, Reilly explained that, "The first story, 'The Crack Cocaine Diet,' was not intended to glorify bad behavior; rather, it was chosen for its tone and point of view and to show the often devastating consequences of drug use. In addition to its tone and style, the message of the story 'I Like Guys' was respect and acceptance, not an advocacy for homosexuality." In the e-mail, Reilly added that the stories were not left up to the students' interpretation alone because "we discuss them extensively."

However, parent Sue Ann Johnson has said the stories promoted bad behavior and a "political agenda" and they shouldn't be incorporated into classroom teachings.

Since Johnson first questioned the need for the short stories to be a part of the elective course's curriculum, the school opted to temporarily remove three of the books and permanently eliminate "The Crack Cocaine Diet" from the list of acceptable reading materials, said Cutler.

"The reason the books were pulled was because I believe that there wasn't enough parent notification about the topics that were being covered," she said. "So, it was parent notification and the developmental age of the students and that varies; all 16-year-olds are not created equal."

The three other stories—along with the short story course—will be examined by a committee comprised of teachers, parents, students, the principal, and the curriculum director, said Cutler. A new English Department head, who will be chosen by the principal, has not been named, she added.

After receiving feedback on the issue from about two dozen parents during two public comment sessions at school board meetings this month, Cutler said, "We had quite a bit of input from the community with different opinions, and I think that the school board is very amenable to having both sides being satisfied in that some parents really want their students exposed to current and contemporary literature, [while] some parents would prefer that their students do not." Reported in: *New Hampshire Union-Leader*, June 27.

Austin, Texas

The Texas State Board of Education is moving toward removing Cesar Chavez and Thurgood Marshall from the social studies curriculum taught to its 4.7 million public school students. According to one of the six "expert reviewers" revising the 1997 curriculum, Chavez "lacks the stature, impact, and overall contributions of so many others; and his open affiliation with Saul Alinsky's movements certainly makes dubious that he is praiseworthy." Another reviewer concluded that Marshall, a Supreme Court justice who as an attorney argued the landmark *Brown v. Board of Education* case, is "not an appropriate example as a historical figure of influence."

Texas has an elected fifteen-member Board of Education. The board's panel of experts to recommend new curriculum standards reflects this conservative perspective, which could soon result in a social studies classroom in which Cesar Chavez and Thurgood Marshall are ignored but the motivational role of the Bible in the nation's founding is

highlighted.

Although Cesar Chavez advocated for Texas farm workers, conservative opposition to him in the state is primarily linked to Chavez getting his start as an organizer with the Community Services Organization which was affiliated with Saul Alinsky's Industrial Areas Foundation. The Texas IAF has been extremely successful over the years, and its COPS/Metro Alliance in San Antonio has often been hailed as model for enlisting Latino participation in the democratic process.

While Cesar Chavez has been under conservative attack since he launched the farm workers movement in 1962, legendary African-American attorney and Supreme Court Justice Thurgood Marshall has rarely been viewed as a "radical." In fact, Marshall and the NAACP practiced the "work through the system" approach that conservatives typically applaud—until, of course, it produces court rulings or elects candidates it opposes.

According to Dan Quinn of the Texas Freedom Network, "The board has appointed completely unqualified political activists who are creating blacklists of people who they want censored and stricken from our history books."

While Quinn's group fights for "a mainstream agenda of religious freedom and individual liberties," Ken Mercer, the Board of Education's vice chair of the committee on instruction claims the Freedom Network has a "radical agenda." Mercer argues that Quinn and his allies are "attempting to steal the textbook process away from our 24 million Texans and indoctrinate students with their politically revised version of American history." Reported in: beyonchron.org, July 14.

Internet

Hartford, Connecticut

The Connecticut Department of Children and Families has taken down part of its website describing a program to train care-givers on the needs of homosexual young people. A conservative political group and a Christian legal group had threatened to sue over the webpages for the Safe Harbor Project.

American Center for Law and Justice lawyer Vincent McCarthy said his organization sent a letter to the department, "demanding that the state of Connecticut DCF discontinue its endorsement of an alternative religious point of view that endorses the homosexual lifestyle."

The webpages that were taken down included links to gay-accepting churches in Connecticut, including some in the United Church of Christ and the Unitarian-Universalist Church. A department spokesperson said those links probably should not have been on the site.

"Many times, some of the most significant wounding that LGBT youth have is from their so-called spiritual advisors," said True Colors' director Robin McHaelen. "Having the opportunity for young people to discover that there are churches that are open and affirming that will welcome and support them felt to us like an important thing."

True Colors is a private organization that works with the state to provide Safe Harbor Project gay cultural sensitivity training to care-givers who deal with young people in state custody.

Family Institute of Connecticut director Peter Wolfgang said "This was the state stepping in to reeducate our children. This is the next big fight, and we will step in to fight it wherever we can, but this was such an obvious open and shut case because it had to do with the state taking a position on religion in clear violation of the first amendment," Wolfgang said.

Wolfgang and McCarthy's groups objected to material that was on the state's website, and on the separate, private website of True Colors. Wolfgang said his organization may revisit the issue of the training itself, in the future. Reported in: WTIC.com, July 15.

foreign

Munich, Germany

Plans by German scholars to reprint Adolf Hitler's *Mein Kampf* as an academic treatise were rejected by the state copyright holders, who said a new edition of the book could fuel support for far-right groups.

The Bavarian authorities reaffirmed a 64-year-old ban on the book after the Munich-based Institute of Contemporary History, or IFZ, applied for permission to reprint the work. State officials said that extremist groups could have legally promoted the book if the ban had been lifted.

"Scholarly as the aims of the institute are, we won't lift the ban as it may play straight into the hands of the far right," Horst Wolf, a spokesman for the Bavarian Finance Ministry, the legal guardians of the state's copyright, said in an August 4 interview. "Prohibition is recognized and highly regarded by Jewish groups and we mean to keep it that way."

Written by Hitler in 1924 as he languished in a Munich prison, *Mein Kampf*, or *My Struggle*, combines autobiography with the Nazi leader's political manifesto. It last rolled off authorized German presses in 1945 before being banned that same year after World War II ended.

While Nazi regalia such as the Swastika are outlawed in Germany under the postwar constitution, *Mein Kampf* was subject to a 70-year copyright lodged with the state authorities where the book was penned. Wolf said the Bavarian authorities aim to "pass the baton on" and achieve some means of banning the book in perpetuity, once copyright expires in 2015.

Historians at the IFZ, which was set up with public funds in 1949 to document and research the Nazi era, had sought exclusive rights to repackage the work in an

annotated scholarly volume and publish it ahead of potential rivals. They received backing from Bavarian state Education Minister Wolfgang Heubisch, who said in a June 26 speech that he supported the proposal because "otherwise there's a danger that charlatans will gain control of this shameful book."

Bernhard Gotto, the institute's spokesman, said he still hopes the state will lift the ban to allow a full analysis of the book. "The work can be demystified," Gotto said in a telephone interview today. "An analysis of the text may reveal answers to key questions such as how much Hitler copied from others and how much he stayed true to his dreadful outpourings."

A team of historians could need three to four years to work on the book, Gotto said. "The job is right up our street," he said. Reported in: bloomberg.com, August 4. □

(Judith Krug . . . from page 145)

Mean, however, was not the word to describe Krug, Blume said: "Just ask her family. . . . Try determined, tough, strong, courageous, loyal, and unstoppable."

Verging on tears, Blume remembered how she once admired a "Sarah Palin jacket" Krug sported (purchased before the VP candidate emerged). "Thanks to Herb and Michelle and [son] Steven, that jacket now hangs in my closet," Blume reflected. "Every time I open that door, Judith the outstanding shopper is with me."

"She would kill me if I get emotional," Blume added, "Damn, we're gonna miss you."

Herb Krug, accepting the award, generously pledged an additional $10,000 to FTRF "for a fund that I hope the board will designate for some noble purpose." Then, he played an audio recording of the honoree herself, declaring in a firm voice that people should have full access to the information they want, "whether or not anyone else in the country likes what they want to see."

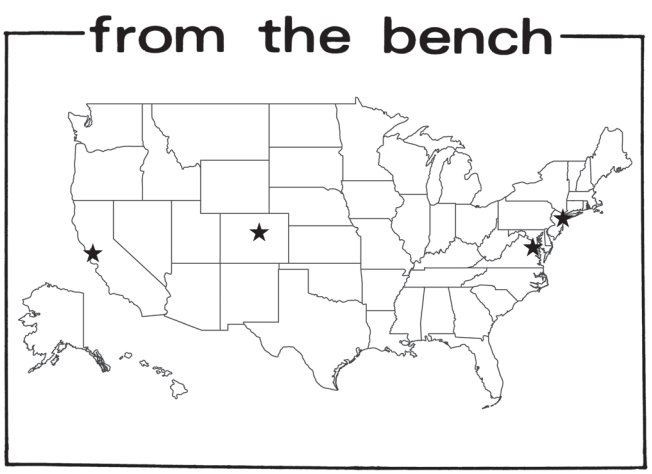
O'Neil formally presented the William J. Brennan Award, which had been announced previously. The Brennan Award, given to a person or group for demonstrating commitment to principles of free expression, has been presented only five times since 1993, with Krug its only posthumous recipient. The full text of O'Neil's remarks may be found on page 147.

Following presentation of the awards, keynote speaker and noted author Scott Turow paid tribute to Krug's memory and to the Foundation with an eloquent and entertaining tribute to the power of reading and the importance of free expression.

In closing, Columbia University librarian Jim Neal, the FTRF treasurer, cited ten components of Krug's remarkable career: librarian; "legal genius"; administrator/strategist; teacher; author/scholar; policy advocate; spokesperson for the library community; politician; leader in the wider intellectual freedom and rights communities; and "a colleague great to be with and fun."

He observed of Krug, "When I think about her career, I become exhausted. When I think about her life, I become energized."

Also at the gala the Foundation's annual Civic Achievement Award was presented to the McCormick Freedom Museum in Chicago. The award was presented by ALA President Jim Rettig. The Foundation also announced that Illinois Library Association Executive Director Robert P. Doyle was named to the Foundation's Roll of Honor, established "to recognize and honor those who have contributed substantially to the Foundation through adherence to its principles and/or substantial monetary support." Doyle co-chaired the gala with FTRF Vice President Burton Joseph. □



U.S. Supreme Court

The Freedom to Read Foundation (FTRF), the First Amendment legal defense arm of the American Library Association (ALA), has joined publishers, booksellers, writers and other media groups in urging the U.S. Supreme Court to strike down a statute that, if upheld, would allow the government to ban a wide range of material it deems to lack value, including many mainstream books, magazines, and movies.

The law in question, a 1999 law that makes it a crime to create, sell, or possess any photograph, film, video, or sound recording in which an animal is harmed or killed, subjects anyone convicted under the law to a possible five-year prison term and fines.

The lawsuit concerns the criminal conviction of a Virginia man, Robert Stevens, who was sentenced to three years in prison for creating several documentaries that included scenes of dog fighting. In the amicus brief filed in July in *U.S. v. Stevens*, FTRF, the Association of American Publishers, the American Booksellers Foundation for Free Expression, PEN American Center and other members of Media Coalition urged the Supreme Court to overturn Stevens' conviction and strike down the statute on the grounds that the law seriously threatens freedom of speech.

"This is one of the most significant First Amendment cases we have seen in recent years," FTRF President Kent Oliver said. "The government is arguing that a whole category of speech can be denied First Amendment protection based on the radical proposition that the perceived value of the speech should be weighed against a compelling government interest. Such a balancing test would allow the abridgment of First Amendment rights with respect to broad categories of speech found to have 'low value' and could easily encompass many forms of expression.

"As repugnant as dog fighting and animal torture are, the law in question does nothing to prohibit those crimes; instead, it creates an exception to the First Amendment to ban the depiction or recording of such occurrences. This strikes us as extreme. We are particularly troubled by the government's argument that would create a broad new category of speech that would be subject to government censorship."

The *amicus curiae* brief argues that the 1999 law would clearly apply to material that is today protected by the First Amendment, including photos, films, and books about hunting, bullfighting, and slaughterhouse practices. While the law does provide an exemption for material with "serious" value, the brief declares that this does not provide enough protection for legitimate works, since the determination of whether the work has serious value will be left to judges and juries who have different definitions of the term. For example, although Stevens emphasized that his films were documentaries, the judge asserted that they lacked "great import."

U.S. v. Stevens is scheduled to be argued before the Supreme Court on Oct. 6, 2009.

The Media Coalition brief was written by Jonathan Bloom of Weil, Gotshal and Manges, working with Michael A. Bamberger of Sonnenschein Nath and Rosenthal. It is available online at http://tinyurl.com/mf3hjp.

Along with FTRF, the signers of the Media Coalition amicus brief include the Association of American University Presses, the Comic Book Legal Defense Fund, Entertainment Consumers Association, Entertainment Merchants Association, Independent Book Publishers Association, and the National Association of Recording Merchandisers. Reported in: FTRF press release, July 30.

The U.S. Supreme Court doesn't have to say why it takes some appeals and skips others. Those decisions are typically announced simply with a list of cases that will be considered. But legal experts note that one category of case the justices tend to take is a dispute in which the federal appeals courts are coming up with different approaches to the same issue. And for that reason, many advocates for Christian students and advocates for gay students had expected that the Supreme Court this week would agree to resolve a legal dispute involving the anti-bias policies of many public colleges and Christian student groups that want the right to ignore parts of those policies.

In cases involving universities, an appeals court in the West is backing the universities while an appeals court in the Midwest is backing the Christian groups. But given a chance to hear a case and rule on the issue, the Supreme Court in late June passed. And some experts think it is likely to pass on the next appeal that could come its way on the issue, too, potentially leaving the issue unresolved—at least until some case gets the justices' attention.

"It would be enormously helpful to public universities if the court would clarify the issue," said William Thro, university counsel at Christopher Newport University and former solicitor general of Virginia. Thro is of the view that public universities cannot make a condition of recognition of a religious group anything that the group feels violates its beliefs, and so would side with the Christian students. But he was quick to add that "I have colleagues at other institutions who are very smart people who disagree with my analysis."

He said it was "very strange and problematic" that the exact same situation—and one that involves important issues such as free association and discrimination—could be decided one way at universities in Illinois and another at universities in California. But for now, that's what to expect.

The two legal positions in conflict can be summarized this way. The universities argue that anti-bias policies—including those barring discrimination against gay people—are legal if they are applied equally to all student organizations. Public universities should have the right to set standards for handing out the limited funds available for student organizations, as long as those standards aren't designed to discriminate against some ideas or groups. The Christian organizations argue in response that they have the right to free association—and that forcing them to follow university anti-bias rules could result in the groups admitting students who have no shared religious ideas with the organization to start with.

The case the Supreme Court declined to appeal actually involves a high school, but a ruling in that case has been cited in two wins by public universities defending their anti-bias rules.

In the case, known as *Truth v. Kent School District*, the U.S. Court of Appeals for the Ninth Circuit upheld the right of a public school district in Washington State to deny recognition to a Bible study group whose members were required to hold certain beliefs. The student group sued, charging a denial of its religious rights. But the appeals court found that because the school district had blanket rules about discrimination—and was not applying them in any different way to the Bible group—the regulations were legitimate.

The *Truth* ruling was long and detailed, in contrast to a two-sentence ruling issued by the same court in March that cited Truth to uphold the right of the Hastings College of Law of the University of California to deny recognition to a branch of the Christian Legal Society. Hastings said that the student group's ban on members who engage in "unrepentant homosexual conduct" violated the law school's anti-bias policies. The appeals court decision on Hastings, with a footnote to *Truth*, said simply: "The parties stipulate that Hastings imposes an open membership rule on all student groups—all groups must accept all comers as voting members even if those individuals disagree with the mission of the group. The conditions on recognition are therefore viewpoint neutral and reasonable."

In May a federal judge also cited *Truth* and the Hastings College of Law decisions in upholding the right of the University of Montana (which is also in the Ninth Circuit) to deny recognition to a branch of the Christian Legal Society there.

Both of those cases are being appealed—the Hastings one to the Supreme Court and the Montana case to the Court of Appeals for the Ninth Circuit. Advocates for the Christian students hope that one or both courts will look beyond the *Truth* ruling. But others doubt that the Supreme Court, having rejected the appeal in *Truth*, would be quick to take cases based on it.

"It's always hard to predict" whether the Supreme Court will hear a case, said Ethan Schulman, the lawyer who represents Hastings. But noting that Truth was "a published decision with an extensive concurrence and a dissent" and the Hastings case resulted in "a memorandum" from the appeals court, "it would be a little surprising" to take that case now.

Other courts have ruled in favor of the Christian groups on other campuses. In a case that is cited by supporters of the Christian Legal Society, the U.S. Court of Appeals for the Seventh Circuit in 2005 ordered Southern Illinois University to recognize a chapter of the Christian Legal Society.

While the cases in California, Illinois, and Montana involve law schools, the issue also is playing out in Greek systems. The U.S. Court of Appeals for the Eleventh Circuit is expected to rule soon in a case in which Beta Upsilon Chi, a Christian fraternity, challenged the recognition rules of the University of Florida. A similar case against the University of North Carolina at Chapel Hill was dismissed by a federal judge in 2006, but the dismissal was based in part on the university changing its anti-bias policies in ways that allowed a Christian fraternity to be recognized.

So where does this leave colleges and students? Waiting. David French, senior legal counsel with the Alliance Defense Fund, said he views the Supreme Court's decision to skip the *Truth* appeal as telling those involved in this issue not a flat "no" but a "not yet." The Alliance Defense Fund has backed the Christian groups in these cases, and French said it would continue appeals to the Supreme Court until the matter is resolved. He said it was "problematic" for universities and students to have such differing opinions coming from appeals courts.

He faulted the Ninth Circuit for failing to focus on free association rights and said that, as a result, the discrimination against Christian groups wasn't getting enough attention in the decisions. "This is absolutely a free association issue," he said. "Religious groups should have the same rights to speak their point of view as anyone else."

French said that the relevant precedent is *Healy v. James*, a Supreme Court decision in 1972 affirming the right of students to form a chapter of Students for a Democratic Society. *Healy* sets a high bar, French said, for a public university to interfere with student organizations, as doing so would violate their First Amendment rights.

But Schulman, the lawyer for Hastings, said that the Christian groups are exaggerating the damage caused by non-recognition. He noted that they can meet on campus, communicate with fellow students and so forth. All the universities want is to assure that no students suffer discrimination with university funds.

"It's not about discriminating against religious organizations. It applies to all organizations," he said.

Schulman added that he found the Christian groups' positions "dangerous and troubling" in that they could invalidate any anti-bias rules. "If religious organizations can not be required to follow non-discrimination rules, then what is to stop hate groups from seeking university funds to form groups that exclude African American or Jewish or Asian students?"

The appeal of the Hastings case has been filed with the Supreme Court and Schulman will be filing briefs next week to urge the justices to let the decision stand. Reported in: insidehighered.com, July 1.

libraries

Contra Costa County, California

The meeting room at the county library branch in Antioch has been booked for Alcoholics Anonymous meetings, *American Idol* auditions, gospel play rehearsals, even a party to celebrate National Hot Dog Month. Now, religious groups are free to worship there, too.

A U.S. District Court judge on June 19 barred Contra Costa County from enforcing a ban on religious services in the room, nearly five years after Faith Center Church Evangelistic Ministries sued after being shut out of the room.

The issue for Judge Jeffrey White was not the ban on worship. A federal appeals court panel in 2006 ruled that the county could exclude certain categories of speech in the room, including religious services, without running afoul of First Amendment rights.

But the devil is in the details: The county, White wrote, cannot figure out how to enforce the ban—how to distinguish worship from speech with a religious viewpoint—without excessively delving into religion.

Whether the county will appeal the ruling is unclear.

Jordan Lorence, an attorney who represented the religious group, called it an odd ruling, only because of what he called the Ninth Circuit panel's "aberrant," 2–1 opinion permitting the ban. Although the county library policy calls for using library meeting rooms for "educational, cultural, and community related meetings, programs, and activities," that covered a wide range of activity, Lorence said.

"The library has a basically wide open forum for private and community groups to engage in a wide spectrum of speech. About the only thing that's excluded is religious speech," said Lorence, of the Alliance Defense Fund, a national Christian legal advocacy group. "This [ruling] reinforces what the Supreme Court has said in at least five major decisions since 1981."

UC Berkeley Boalt Hall School of Law professor Jesse Choper, however, said the major Supreme Court decisions have not directly addressed policies that don't just exclude religious groups, but other activities as well.

Faith Center had used the room to reach people "who may be unwilling to set foot inside a church building," according to its leader, Hattie Mae Hopkins, who now lives in Sacramento. In mid-2004 she applied to use the room for "prayer, praise, and worship open to the public, purpose to teach and encourage salvation through Jesus Christ and build up community." During the first of those meetings, library staff advised the center that it violated a restriction against religious use.

Hopkins sued the county and won, but the Ninth Circuit panel found that the county had restricted use of the meeting room with a policy that made it a "limited public forum." That policy also excluded schools from holding regular, curriculum-based functions there.

But the appeals panel also questioned the difficulty for the court or the county in parsing worship and other forms of religious speech. The county, White wrote, offered a policy where groups would certify they would not conduct religious services in the 900-square-foot room.

"If the county's primary concern is to avoid allowing its Meeting Room to become an 'occasional house of worship,'" the judge wrote, "allowing the fox to guard the henhouse is not a satisfactory resolution."

Mark Scarberry, a law professor at Pepperdine University, said the judge was right to suggest a fuzzy line between religious viewpoint and worship. Is Buddhist meditation a form of worship or a community activity? What about a sermon about caring for your neighbor?

"It's kind of a subjective call as to what is simply a lecture or a talk versus when are they starting to actually worship," Scarberry said. "I think it's very troubling to have a government official deciding a meeting can't go forward in a place because people are getting a little too religious here." Reported in: *San Jose Mercury-News*, June 23.

colleges and universities

Denver, Colorado

Three months after a jury ruled that Ward L. Churchill, a former University of Colorado professor, was wrongfully terminated for his political views, a judge refused July 7 to give him his job back.

Chief Judge Larry J. Naves of Denver District Court ruled that the university's regents were effectively acting as judicial officers when they voted to dismiss Churchill in 2007 after a faculty committee concluded that he had committed academic fraud. As a result, Judge Naves found, the regents were legally protected from Churchill's effort to reverse their ruling.

David Lane, Churchill's lawyer said that he would "absolutely, positively appeal." The decision, Lane said, "sends out to America a very, very bad message that if the University of Colorado fires you because they don't like what you said, don't look for justice from this court." Lane said that an appeals court decision would probably be around a year away—extending the life of a controversy that started in 2005.

"To me, this is judicial activism in its worst form," Lane said. "What is really a shame here is that a jury said Ward Churchill's free speech was violated, and yet Judge Naves goes on for almost 50 pages, saying in so many words, 'Too bad.'"

Churchill, an ethnic studies professor, caused an uproar when he referred in an essay to some victims of the September 11 terrorist attacks as "little Eichmanns" and argued that that was the true reason he was terminated. He filed a wrongful-termination suit, and after a trial earlier this year, a jury found that his political views played a substantial role in his dismissal. But in his 42-page ruling, Judge Naves said the jury's decision to award Churchill only $1 compelled him to deny reinstatement.

"If I am required to enter an order that is 'consistent with the jury's findings,' I cannot order a remedy that 'disregards the jury's implicit finding' that Professor Churchill has suffered no actual damages that an award of reinstatement would prospectively remedy," Judge Naves wrote.

Judge Naves also said that Churchill's rejection of the faculty committee's conclusion that he had engaged in academic misconduct had made it difficult to return Churchill to campus.

The ruling was a clear victory for the university, which also faced the prospect of having to pay Churchill for the years he might have taught there, an option Judge Naves also rejected.

"At the moment, we feel very satisfied," said Bronson Hilliard, a university spokesman. "There was an important principle at stake here, and that is academic integrity, which is at the heart of everything we do in research and teaching. We feel very gratified at the outcome."

The decision was at least a temporary conclusion to a tumultuous case that has lasted nearly five years.

When Churchill's controversial essay first appeared in 2001, it attracted little notice. In it, he described some workers at the World Trade Center as "little Eichmanns," referring to Adolf Eichmann, who has been called the architect of the Holocaust.

By 2005, however, the essay had spread over websites, provoking outrage. Shortly after, scholars came forward, accusing Churchill of plagiarism in his research on American Indians.

After several weeks of reviews, the university announced that the 9/11 essay could not be grounds for dismissal, given Churchill's rights to free expression and academic freedom and the lack of any evidence that his political views interfered with his teaching. But at the same time, Colorado announced that Churchill could be investigated and possibly fired for scholarly misconduct. That was because—once the controversy broke—scholars, journalists, and others checked out Churchill's scholarship and quickly heard from researchers who said that Churchill had plagiarized or distorted their work.

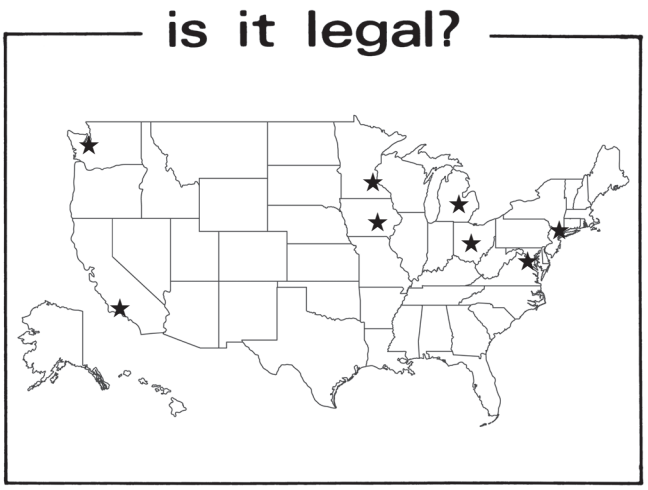
Colorado then started a series of investigations in which various faculty panels examined the charges and considered potential punishments. While the panels were far from united in urging Churchill to be fired, there was consensus that he was guilty of repeated, intentional academic misconduct—plagiarism, fabrication, falsification, and more. That was May 2006. After still more reviews, the University of Colorado Board of Regents fired him in July 2007. Churchill maintained throughout that he was a victim of his politics—although at least some of those who accused him of inappropriately using their academic work are scholars of Native American history who share his belief that those they studied were treated in horrific ways.

Churchill's suit charged that political concerns dominated the review of the charges against him. Significantly, under Colorado law, the jury that found in his favor did not have to believe that he never committed research misconduct (although he has repeatedly denied doing so). Rather the standard was that to find in Churchill's favor, the jury had to determine that his political views were a substantial or motivating factor in his dismissal, and that he would not have been fired but for the controversy over his opinions.

The jury's ruling set the stage for a hearing at which Judge Naves heard testimony from Churchill's supporters that he should get his job back and from university officials arguing against that.

After the jury's verdict, Churchill's lawyers asked Judge Naves to order reinstatement, and at a hearing they argued that returning him to his job would be logical, based on the jury's findings. Patrick O'Rourke, a lawyer for the university, countered that Churchill's return would harm the institution.

(continued on page 187)



libraries

Iowa City, Iowa

A policy being considered by the Iowa City Public Library's board of trustees would keep registered sex offenders out of the library but grant them use of online resources and the ability to send a representative to check out material.

The proposed policy came in response to a new state law that went into effect July 1 ruling that sex offenders who have been convicted of a crime against a minor cannot enter a public library without the written permission of the library administrator. Sex offenders also are not allowed to loiter within 300 feet of a library.

Board president Thomas Dean said the proposed policy would strike a balance between keeping children safe and freedom of information by denying sex offenders entrance to the library but still allowing them access to materials and services.

"What that means is they'll be allowed to have a library card, because we believe in open access to the library," Dean said. "That will allow them access to resources online on our website, and a designated representative can bring their library card to the library to check out materials for them."

Dean said the policy would not mean any extra security measures at the library and says that it will be tough to enforce.

"We're not going to be seeking out sex offenders," Dean said. "It is one of those difficult kinds of issues—how do you enforce it? We believe in the safety and security of patrons, but also access to the library to the public and freedom of information."

The board also was weighing what criteria, if any, would allow a sex offender access to the building should they appeal to the administrator, as is allowed in the new law.

"Some libraries have absolute prohibition, with no appeal and no services, no anything," Dean said. "We're trying to have a bit more access to the library for all, and we're trying to find that balance." Reported in: *Iowa City Press-Citizen*, July 23.

Owosso, Michigan

The Shiawassee District Library Board has begun the process toward regulating adult material at the Owosso branch. The board voted 7–1 during its June meeting to filter online content. Travis Senk cast the lone dissenting vote. Shiawassee District Library Director Steven Flayer said he was researching optional online filters and would present them to the board at its July 22 meeting.

"The Board has also directed me to increase the physical barriers around the unfiltered computers, which we have been doing," Flayer said, adding that the measures for changing the library's policy may continue. "I think the board will look at this matter again [at the next meeting] to determine whether it's meeting the needs of our patrons," he said.

The Shiawassee District Library's adult content policies came under scrutiny in May when Owosso resident Catherine Loxen told the Board her granddaughter witnessed a man using a computer to view adult material earlier this year.

Senk said while he wasn't happy with what happened with Loxen, he didn't agree the library board should be the authority. "I don't think limiting what everyone else can do is a fair response. I feel that if we start trying to filter everything we're going to be in violation of library policy acts," Senk said. "Once you start filtering, it leads into the free speech issue."

Loxen's story also brought the attention of local Internet filtering company Covenant Eyes. Vice president Bill Spencer presented information to the Board at its June meeting. "I went up to two of the unfiltered computers and did a history check," Spencer said. "I was curious to see if people were seeing any type of pornography still on the computers."

Spencer said the history search revealed that several websites may have been used for child pornography—which is illegal and against library policy. "What I told the board is basically that there isn't anybody that would believe these images were not of young people under the age of 18," Spencer said.

Spencer added he asked the board about the library's

policy of not allowing access to child pornography. "The library, in its policy, has defined what obscenity is, yet for some reason [the board members] think it's wrong to filter the Internet content," he said.

Flayer said to his recollection, the board could not make changes because Spencer could not present facts that the subjects of the websites were underage. "He was basing his findings, the way he presented it to the board, that it was child pornography based on how old he thought the models looked," Flayer said. "Of course we're attempting to eliminate these things, but it's not going to be perfect."

Flayer said the library has begun to filter content on most of the computers in the library using current software. "(Covenant Eyes) states on its own website that no filter is going to be 100 percent effective," Flayer said. "How can they complain that our filter is not getting everything after saying that? The effort is being made to limit it as much as possible."

Adult Services Librarian and assistant director Margaret Bentley said while she understands the problem, it is out of her hands. "Whatever the board decides, I will have to follow," Bentley said.

Durand Memorial branch librarian and assistant director Nancy Folaron said she has not seen issues with adult content at the Durand branch. "We only have seven computers and all of them are fairly close to the desk, so we can keep an eye on them," Folaron said. "It's not like the Owosso branch where the computers are in a separate area and out of view."

Folaron also said the branch currently uses no filtering software, but would make appropriate changes based on the board's July vote. Senk said he believed the issue might continue at the library for some time. "We're not done working on it at the library," Senk said. "It's a complex issue and it's not solved easily." Reported in: Owosso Argus-Press, July 3.

Olympia, Washington

The Washington State Supreme Court heard arguments June 23 over whether an Internet filter at the North Central Regional Library System violates freedom of speech rights.

"Several libraries are really looking at it close and holding their breath," NCRL Director Dean Marney said. "The state librarian is going to be there. How many times does a library get to the Supreme Court level?"

The American Civil Liberties Union sued the regional library system in 2006 on behalf of three North Central Washington residents and a pro-gun organization who say the library's Internet filter policy violated their state and federal freedom of speech rights.

The lawsuit was originally filed in federal court. A federal judge referred part of the case to the state Supreme Court, which will decide whether the policy is lawful under the state constitution, said ACLU spokesman Doug Honig.

At issue is whether libraries should offer a way to turn off Internet filters for adults who request it.

Internet filters are required by the Children's Internet Protection Act (CIPA) in order for schools and public libraries to qualify for federal money.

The North Central Regional Library system includes 28 community libraries in Chelan, Douglas, Grant, Ferry, and Okanogan counties. The majority of the branches have one or two public computers.

CIPA requires that three categories of websites be blocked: visual depictions of obscenity, child pornography, and images "harmful to minors." Fortiguard, NCRL's system-wide filter, also blocks Web chat, instant messaging, gambling sites, image searches, video searches, nudity, pornography, and anything that could damage the libraries' computer network.

The four plaintiffs in the lawsuit say the filter unfairly blocks legal, appropriate information too, such as health-related research, social networking sites, and informational sites about drug and alcohol addiction.

The ACLU wants a court order directing NCRL to disable the Internet filter at the request of adults.

"NCRL's policy of full-time filtering for adults is overbroad, and the library has no reasonable justification for denying adult patrons access to the substantial amount of information it blocks," Honig said in a prepared statement.

NCRL will not completely remove the filter, but library staff will review and sometimes unblock individual websites upon request, Marney said. The process takes less than 24 hours, he said.

"What we're saying is you've got to consider the rights of kids to be protected in a safe environment and the right of employees to work in a non-hostile work environment," Marney said.

According to court documents, NCRL received 92 requests to unblock websites between October 2007 and February 2008. Of those, 12 requests were granted.

A few library systems statewide side with NCRL's policies, including the Fort Vancouver library system and the Olympia-based Timberland library system in southwest Washington, Marney said. Other metro libraries, such as Seattle and Spokane, offer patrons a choice, Marney said.

At issue in *Bradburn v. North Central Regional Library* are some knotty questions still facing libraries.

Is the Internet a collection unto itself or can a collection development policy be applied to it, thus blocking constitutionally protected speech?

Can libraries be required to use alternative procedures—such as privacy screens or the "tap on the shoulder"—if they deem filtering software a better solution?

Is unblocking on a site-by-site basis, as NCRL is willing to do, sufficient if it takes more than a few hours, or a few days?

The U.S. Supreme Court's fractured ruling in the case

challenging the Children's Internet Protection Act (CIPA), known as *U.S. v. ALA*, provides the option of unblocking on a site-by-site basis, but two concurring opinions offered different guidance. One suggested unblocking must be done "without significant delay," while the other compared it to interlibrary loan and thus may take time. Neither, however, said it was all right for the library to apply its collection development policy to limit the scope of sites it would unblock.

The conflict has placed NCRL director Marney at odds with some in the leadership of the ALA and its sibling Freedom to Read Foundation, which, while not a party to the case, has helped supply witnesses for the plaintiffs. Also, in a sign of caution regarding local politics, the Washington Library Association (WLA) has remained neutral in the case.

"Everybody wants to simplify, they want to paint us as these redneck conservatives," Marney said. "We're saying, it's complicated; you have to consider the rights of the staff." Only one of NCRL's 28 rural libraries has a children's room and most have only a computer or two. In one branch smaller than 1,000 square feet, he said 70 kids attended a summer reading program. "What if an adult was there looking at inappropriate material?" he asked. In response, attorneys for the plaintiffs say the threat of such a situation is overblown.

The lively 49-minute oral argument teased out many of the issues in the case. (While the state Supreme Court is considering the state constitutional issues, the case will then return to federal court.) One issue raised early in the oral argument was whether the plaintiffs—three residents, plus the Second Amendment Foundation, publisher of Women and Guns—had asked for the sites they sought to be unblocked.

As the library states in its legal papers plaintiff Sarah Bradburn sought information on alcohol and drug-addiction topics, but cannot recall which sites and did not contact the library before filing suit. Plaintiff Pearl Cherrington was unable to access an art gallery web site and another site containing health-related information, but cannot recall the site.

Only one plaintiff, Charles Heinlen, who was blocked from a personals site and MySpace, among other sites, requested disabling. The Second Amendment Foundation was advised by Heinlen that its site was blocked.

Why, NCRL attorney Thomas Adams was asked, was Women and Guns blocked? "We don't believe it was ever blocked," he responded. "We don't contend that it should be blocked. The Weapons category is not now and has never been a blocked category."

The library uses the FortiGuard filter to block much more than the obscenity, child pornography, and "harmful to minors" categories mandated by CIPA. It blocks web sites in the following categories: Hacking; Proxy Avoidance; Phishing; Adult Materials; Gambling; Nudity and Risque; Pornography; Malware; Spyware; Image Search; Video Search; Spam URL.

The policy, Adams said, tracks NCRL's mission statement, to promote reading and lifelong learning, and the library's collection development policy.

Is restricting access to a website different from choosing what to put on library shelves, asked Chief Justice Gerry Alexander. "What we're restricting are not individual sites," Adams said. "We're making content-based decisions about categories of sites."

Attorney Duncan Manville, representing the plaintiffs (who are also represented by the ACLU of Washington), said that the filter prevents adults from accessing a substantial amount of constitutionally protected speech. He said the library was speculating about what might happen if it disabled the filter and that it inappropriately dismissed alternatives that work for other systems.

Drawing on the record of the case, Manville noted that the library district in Fairbanks, Alaska, does not filter but rather configures terminals so nobody can see what others are looking at, while the Jefferson County Library District in Madras, Oregon, and the Stark County Library District, Canton, Ohio practice the "tap and tell" policy in which staffers intervene if an adult is observed to be looking at inappropriate material.

Is the library's policy a collections policy? "We absolutely disagree that, when a library blocks Internet content, it is making a collection decision," Manville said. "The collection decision that the library makes when it obtains Internet access is the decision to acquire access to the Internet. What the library does when it filters out selective pages from the Internet is the equivalent of acquiring the Encyclopedia Britannica and then ripping pages out of it."

The plurality 2003 CIPA decision was signed by four justices, with two others writing concurrences. "Justice [Anthony] Kennedy said if a library will disable a filter promptly upon request, there's not much to this case, and that's what we're asking for," Manville said.

Kennedy, in his concurrence, actually said that the library should either disable the filter or unblock filtered material promptly. By contrast, Justice Stephen Breyer wrote, in his concurrence, that "it is difficult to see how . . . any delay associated with compliance could prove more onerous than . . . interlibrary lending practices that require patrons to make requests that are not anonymous and to wait while the librarian obtains the desired materials from elsewhere."

Manville criticized NCRL's policy. "Setting aside the fact that it might take days to unblock a particular site, the library will only unblock sites if doing so will be consistent with its Internet public use policy," he said, noting that, of 90 unblocking requests in the record, only 12 were granted. "The library doesn't unblock web sites automatically at the request of adults, and that's what's required by *U.S. v. ALA*," he said.

The Internet provides instant information, the plaintiffs' brief states, while, at its best, the speed of NCRL's response to unblocking requests most often resembles that of the U.S. postal services.

That, NCRL director Marney said, was not such an insult. "It's not burdensome, if you look at it in the context of our services," he said, noting that the NCRL offers mail order of all its material, with returns prepaid.

Manville also pointed to the lack of granularity in the filter, which blocks the personals section of Craigslist because it has included prostitution ads. "The library simply blocks access to entire personals site because of a few bad apples," Manville said.

He also suggested that the library's report of inappropriate material was "maybe a dozen instances in ten years." He noted that it was not clear the materials were obtained via the web, but could've been email attachments.

NCRL, he said, can install privacy screens, recessed desks, and monitor use. Does the constitution require them to make those expenditures, Manville was asked. "Absolutely," he said, suggesting that it was the library's burden to show those techniques won't work.

Does the library's action qualify under the legal doctrine of prior restraint, which describes action to prevent communication from reaching the public?

Adams said no. "A prior restraint is an administrative order, a judicial injunction that attempts to prohibit speech, accompanied by civil or criminal penalties." The library's policy imposes no penalties. "We make no attempt to suppress publication at its source," he said. "All we do, as a matter of collection development, is intercept it."

Justice James Johnson asked if a patron requested a work by artist Robert Mapplethorpe, known for his explicit photography, "you could say it's not consistent with our policy."

"That's correct," said Adams.

What would happen, Justice James Johnson asked, if a person walked into library bringing a pornographic magazine to read?

"If it became disruptive, we'd ask that person to leave," Adams said. Adams responded that unfiltered access can mean a disruptive, potentially hostile environment.

In an amicus brief, Electronic Frontier Foundation and Center for Democracy and Technology joined the plaintiffs, aiming to emphasize the core First Amendment protections that library users have and to remind the court that libraries play a key role in providing Internet access, particularly in rural areas.

As a practical matter, NCRL's processing of unblocking requests can severely hinder job-seekers, the brief states. Even under NCRL's new "automated" unblocking system, fewer than one third of the 90 requests were responded to on the same day, and some were delayed by more than three days

Marney and ALA President Jim Rettig exchanged some frosty email earlier this year. Marney criticized the Freedom to Read Foundation's Report to the Council at the 2009 Midwinter Meeting, calling its summary of the library's policy "an unhelpful oversimplification."

"Although it was heartening to hear that the FTRF is not a participant in this lawsuit, previously they provided factual witnesses in the case," Marney wrote, protesting that no one from the organization inquired of NCRL but instead "listened exclusively to NCRL's paid adversaries."

"Moreover, it seems the FTRF has lost sight of the American Library Association's essential purpose to support all libraries and their role in society," he asserted.

Rettig responded that "FTRF has advised libraries that CIPA was upheld by the United States Supreme Court only because the federal government took the position at the oral argument that CIPA requires disabling of filters upon request for adults. Without that guarantee there were insufficient votes for a majority upholding the statute. Thus, FTRF has cautioned libraries that failure to disable filters for adults upon request could subject libraries to as-applied challenges by patrons."

"FTRF serves to protect the First Amendment rights of libraries and their patrons," Rettig wrote, noting that ALA's "mission is not 'to support all libraries,' but instead 'to provide leadership for the development, promotion, and improvement of library and information services and the profession of librarianship in order to enhance learning and ensure access to information for all.'"

Marney said he asked the Washington Library Association, if it were to take a position, to give him equal time. It has not taken a position.

"There are finely divided issues at stake here, and we respect the well-thought-out considerations and opinions of those on both sides," WLA president Tim Mallory said. "Taking a stance would paint a broad brush over these distinctions, and we are hoping for masterful strokes that will allow for the prerogatives of local control while still meeting all the requirements of the public good as expressed in our laws. We wish the Supreme Court well in its deliberations."

The parties acknowledged that the filter both overblocks and underblocks, but their experts offered different interpretations of the error rates. Plaintiffs' expert Bennett Haselton, founder of Peacefire, tested FortiGuard and determined that out of 100,000 randomly selected dot-com domains, 536 pages were blocked as pornography or adult materials, with 64 blocked in error, for an error rate of 11.9 percent.

Defendants' expert Paul Resnick, of the University of Michigan's School of Information, determined that 60,000 URLs had been visited during one week of use at NCRL and that 2,180 URLs had been blocked. That total included 289 complete webpages, with 20 blocked in error, and 1,406 "helper images"—small images that are part of the webpage—of which 744 were blocked in error. Reported in: Wenatchee World, June 22; Library Journal, July 7.

colleges and universities

Santa Barbara, California

In a limited sense, the case of William I. Robinson is over.

On June 24 he was notified that a faculty committee had found no "probable cause" to undertake a full investigation of complaints filed against him related to e-mail messages he sent to his students in which he compared Israelis and Nazis. Further, he was notified that the administration at the University of California at Santa Barbara had accepted the faculty members' analysis, and that the case was over—without his ever having faced formal charges before a disciplinary committee.

Supporters of Robinson, a tenured professor of sociology, agreed with those findings. But they said that grievances filed over e-mail messages sent in January should have been seen immediately as baseless, and that allowing the case to linger for months endangered the academic freedom of Robinson and others.

"We're pleased, but this decision is too late," said Yousef K. Baker, a graduate student and one of the organizers of the Committee to Defend Academic Freedom at UCSB. "I don't think it is enough for the university just to say that this case is terminated. The university needs to be held accountable for the chilling effect that their tardiness in doing what they have done now has created."

In a statement, Robinson said that he is waiting for "a public apology from the university as a first step in clearing my name after it has smeared my reputation and undermined my professional integrity." He added that he plans to file a grievance over how he was treated in the case.

The case attracted attention far beyond Santa Barbara, with the American Association of University Professors calling on the university to "pause" its inquiries because of the academic freedom issues involved. Cary Nelson, national president of the AAUP, said that "although I am pleased that the Robinson case has been closed, I am also concerned that unnecessary investigations of faculty exercising their academic freedom are having a serious chilling effect on our more vulnerable or less courageous colleagues."

The dispute dates to an e-mail message that Robinson sent to the approximately 80 students in January in a course about sociology and globalization. The e-mail contained an article criticizing the Israeli military's actions in Gaza. Part of the e-mail was an assemblage of photos from Nazi Germany's persecution of Jews and from Israel's actions in Gaza. Students were invited to look at the "parallel images." A message from Robinson argued that Gaza would be like "Israel's Warsaw."

In February, the Anti-Defamation League's Santa Barbara office wrote to Robinson to protest the e-mail and to urge him to repudiate it. "While your writings are protected by the First Amendment and academic freedom, we rely upon our rights to say that your comparisons of Nazis and Israelis were offensive, ahistorical, and have crossed the line well beyond legitimate criticism of Israel," the letter said. It went on to say that the "tone and extreme views" in his e-mail were "intimidating to students," and that using his university e-mail to send "material that appears unrelated to" his course violated university standards for faculty members.

Following that letter, two students in the course dropped the class and filed complaints against Robinson. One student wrote that she felt "nauseous" upon reading the e-mail, and felt it was inappropriate. A second student complaint accusing Robinson of being unprofessional—also from a student who dropped the course after receiving the e-mail—said that Robinson has "clearly stated his anti-Semitic political views in this e-mail."

Under Santa Barbara's faculty governance system, such complaints go to a "charges officer" and then—if they are serious—a committee may be formed, somewhat like a grand jury, to determine whether formal charges should be brought against the professor. Robinson and his supporters have maintained that the e-mail was so clearly covered by academic freedom that the faculty charges officer should have dropped the matter. Instead, a committee was formed to determine whether the charges merited consideration by the standing committee that considers such allegations and can recommend sanctions against a professor. It was that non-standing committee that determined that there was no need to bring charges for a full investigation. Under the university's rules, no official statement is released about why charges were not brought. But earlier memos suggested that the two rules Robinson was accused of violating were measures that bar faculty members from "significant intrusion of material unrelated to the course" and "use of the position or powers of a faculty member to coerce the judgment or conscience of a student or to cause harm to a student for arbitrary or personal reasons."

The position of Robinson and his supporters has been that Israel's conduct in Gaza was in every way appropriate as a topic for discussion in a class on global issues, and that the complaints filed against him were a simple case of students (and some pro-Israel groups) disagreeing with Robinson's analysis. Robinson claimed the charges against him were "absolutely absurd." He noted that he is Jewish and said that he abhors anti-Semitism, and that his academic freedom is being violated by the university taking seriously charges that link his e-mail criticisms of Israel's government with anti-Semitism. "This is all because I have criticized the policies of the State of Israel."

Stand With Us, a pro-Israel group that has been organizing petition drives to back the idea of a full investigation of Robinson, issued a statement questioning the university's decision. "We are surprised and disappointed that UCSB chose not to uphold their standards for professional conduct, and that it has blurred the lines between responsible education and the peddling of propaganda. It is unfortunate that students will continue to be victims of partisan indoctrination

and misinformation," said the statement, from Roz Rothstein, international director of the organization.

The Academic Senate at the university passed a resolution to study how this investigation was handled—and many faculty members have questioned whether the process used was appropriate, with many critics noting that pro-Israel groups have encouraged criticism of Robinson.

Paul Desruisseaux, associate vice chancellor for public affairs at Santa Barbara, said that because this case is a personnel matter, the university would have no comment on the case. He said that it was important to note that the university "places great importance on the defense of academic freedom," but that academic freedom "does not exempt a faculty member from the provisions of the faculty Code of Conduct," or limit the ability of people inside or outside the university to file grievances.

Greg Lukianoff, president of the Foundation for Individual Rights in Education, blogged in support of the university's decision. "Stripped of the jargon of sociology and the politicization of the issue by both sides, the question becomes whether or not the professor in what essentially amounts to a global politics class can give his opinions about global politics," he said. "While many of his critics would prefer to see the Professor Robinsons of the world denied this right, in the end, we all benefit from classroom and academic discussions in which the exchange of ideas is as free as possible." Reported in: insidehighered.com, June 25.

St. Paul, Minnesota

United States Code specifies how people should act when the Star-Spangled Banner is played: "All present except those in uniform should stand at attention facing the flag with the right hand over the heart; men not in uniform should remove their headdress with their right hand and hold the headdress at the left shoulder, the hand being over the heart."

The uniform in question is military, not athletic. A lawsuit filed July 17 against Macalester College charges that Jacob Bond was kicked off the football team there in 2006 for refusing to remove his helmet while the national anthem was being played—an act he said was a protest over the Bush administration's war in Iraq. Bond graduated from Macalester in May, but the suit says that he did not have the experience he believed he would because of being kicked off the team and because the college failed to adequately accommodate his disabilities with Asperger's Syndrome and attention-deficit disorder.

The part of his suit that is unusual, however, is not about disabilities, but the national anthem. According to the suit, the incident took place during a practice, when the national anthem was played on an adjacent field as part of a competition unrelated to the football team. Patrick Babcock, an assistant coach, told the players to remove their helmets, the suit says. Bond said that he kept his helmet on and turned away, as an act of protest, leading Babcock to scream at him: "Why do you always have to be different?" The next day, Bond was off the team.

According to Bond, he was removed by the head coach, Glenn Caruso, who has since moved on to a similar position at the University of St. Thomas. Macalester responded that Bond left the team voluntarily, that he had multiple conflicts with the coach, and that no one has ever been punished at the college related to head coverings during the national anthem. However, Macalester officials also acknowledged that there was an "incident" involving Bond's refusal to take off his helmet and that it immediately preceded his departure from the team.

The suit charges that punishing him for keeping his helmet on violated the college handbook's pledges to support free speech and constituted breach of contract with Bond. The suit says that Bond's mother, who had traveled to campus thinking she would watch her son play, spoke with both an administrator and the head coach and says both reported on an incident involving the national anthem.

The incident took place at the beginning of Bond's sophomore year. During his freshman year, he said that he generally had his helmet already off when the national anthem was played before games, and that he didn't feel the need to put his helmet on as part of his protest. But he said that several times when the anthem was played previously and he had his helmet on, he left it on, without incident.

With the war in Iraq, he said, "I don't think that with the actions of the government that our national anthem is important enough to interrupt a football practice."

Trudy Bond, his mother, said that she was shocked by the way Macalester treated her son, comparing it to the actions of the Bush administration. "I'm very proud of my son for being willing to make a statement," she said.

Laurie Hamre, vice president for student affairs, said that the college was "disappointed" that a suit had been filed. She said that an internal investigation and one by the Education Department had found no violations. (Bond's lawyer said that the focus of the Education Department inquiry was Bond's academic experience, not the issue of political free speech.)

Hamre said that she could not speak to the specifics of the suit. But she acknowledged that she spoke with Trudy Bond the day after the disagreement "and indicated that I knew there had been an incident."

During athletic events, when the anthem is played at the college, she said that Macalester was the same as other colleges. "I think the norm would be respect, but there would never be any kind of penalty because of free speech," she said.

Asked if Bond was reprimanded for refusing to take off his helmet, she declined to get that specific but said, "Macalester has never denied participation to any student, in any co-curricular activity, because of free speech." Reported in: insidehighered.com, July 20.

Columbus, Ohio

Congress had nobly stated intentions when it enacted sweeping student privacy laws nearly 35 years ago, but several elected officials now question whether the legislation has become a shield to hide embarrassing truths about college athletics and campus safety. Joining the growing chorus of skeptics is an organization that's historically been uninterested in calls for greater transparency: the U.S. Department of Education.

The Family Educational Rights and Privacy Act [FERPA] was enacted in 1974, seeking to guard "education records." Many believe it's become much more than that, however, serving as a blanket validation for secrecy. Paul Gammill, the recently named head of the education department's Family Policy Compliance Office, says recent media reports detailing inconsistent enforcement of FERPA have convinced him the office needs to do more "outreach," educating college officials about the law. That outreach would include meeting with officials at the National Collegiate Athletic Association, which routinely handles student records and has drawn critics for what some describe as selective obedience to FERPA.

"FERPA is designed and intended to protect the privacy rights of students and parents when it's appropriate. That's its main purpose," Gammill said. "If institutions are using this inappropriately, that's a concern for the department."

A series of stories in the Columbus Dispatch revealed inconsistencies in how FERPA has been applied by college athletics departments, and raised questions about the NCAA's citation of FERPA as a reason for not disclosing the names of students involved in infractions.

The NCAA requires student athletes to fill out a consent form, saying the students agree to disclose educational records to the association that are covered by FERPA. While the form says students "will not be identified by name" in published information, the agreement leaves vague whether the NCAA can disclose information potentially protected by FERPA when a student violates association rules. The NCAA uses this information for oversight of academic issues like graduation rates.

"We actually are trying to meet with them sometime in the next couple of weeks to understand what those [policies] are," Gammill said.

At issue for the Education Department is a single sentence in the student consent form, which reads: "You also agree that information regarding any infractions matter in which you may be involved may be published or distributed to third parties as required by NCAA policies, bylaws or procedures." So what does this mean? Can the NCAA disclose students' names if they commit infractions—even though that's not standard practice?

"That's a clarification we want to get from the NCAA," Gammill said.

For staunch advocates of student privacy, the NCAA claiming authority to disclose educational records—even in cases of major infractions—might be troubling. For a growing group of First Amendment advocates and elected officials, however, the NCAA's tendency to withhold information about wrongdoers is equally problematic.

In a recent letter to the education department, U.S. Sen. Sherrod Brown, (D-OH), voiced concern about how colleges and the NCAA apply FERPA, saying "the public has not had access to important information about integrity in collegiate athletic programs."

In response to the letter, Gammill said "we want to make sure the senator's concerns and desires get answered." Ohio Attorney General Richard Cordray has also expressed frustration with FERPA, although the department said that it had not received a letter from him.

Perhaps most significantly, even the lead author of FERPA, former U.S. Sen. James L. Buckley, has said, "the law needs to be revamped." Buckley, whose leadership on FERPA has given the law the nickname "the Buckley Amendment," had envisioned a law that would keep academic information like students' grades out of public view. He now says he never imagined it would be so broadly applied.

The NCAA routinely issues sanctions and reports tied to violations of its rules without naming the students—or even the coaches, who aren't covered by FERPA. The institutions under investigation are often even more restrained than the NCAA. Such was the case during a recent scandal at the University of Alabama, where athletes who were given free textbooks as part of their scholarships were accused of passing along those books to classmates. In its own report to the NCAA, the university blacked out the dollar value of the textbooks and the number of students involved, citing FERPA as a reason for hiding information that critics would argue the law was never intended to cover. The NCAA's report on Alabama's infractions, however, published both the dollar values and number of student violators. Names remained redacted in the NCAA's report, too.

Since FERPA only applies to an "educational agency or institution," the NCAA—a membership organization for college athletics programs—is not bound by it. As a matter of practice, however, the association abides by the law in the interest of maintaining good relations with its members and protecting its oversight function, a legal official said.

While the burden of FERPA rests with colleges, the law states that a college cannot continue to disclose FERPA-protected information to a third party once it re-discloses the information. If a third party like the NCAA were to do so, the college would not be permitted to share educational records with the association for a period of five years, according to the law. As such, the NCAA would lose access to the very information it uses to calculate graduation rates or monitor students' academic standing.

"Then we couldn't do our jobs," said Elsa Cole, the NCCA's vice president for legal affairs. "The law applies to institutions of higher education, [but] we want to make sure the institution doesn't run afoul with that."

But the NCAA goes further than the law, refusing to publish the names of coaches, administrators or just plain human beings who happened to be referenced in reports. Cole cites two reasons for this practice, saying it helps protect confidential sources and accords with "common law privacy rights."

There are circumstances, however, where the NCAA reserves the right to disclose the FERPA–protected information it receives, Cole said. That's where the student consent form regarding infractions comes into play. If a student or institution provides false statements tied to an infractions case, the association may choose to publicly discuss FERPA–protected information to correct the record, Cole said. This could happen if a student or institution made an untrue statement, or even if they omitted important information and "we just feel that a more complete story might be necessary," Cole said.

In other words, the NCAA believes it can choose when it's time to disclose FERPA–protected information, a luxury only afforded to colleges in rare emergency circumstances. On the other hand, there's precious little precedent for the NCAA doing that, according to Mark Jones, who worked on the NCAA enforcement staff for 18 years.

"It's really got to be something egregiously bad for the NCAA to go out and correct the record," said Jones, co-chair of the Collegiate Sports Practice at Ice Miller LLP.

Much of the debate over FERPA centers on what actually constitutes an "education record." Critics of limited disclosure attach great significance to the term "education," but the broader wording of the law describes the records as any that are "directly related" to a student.

"There is nothing that requires a record to be academic for purposes of FERPA," said Steve McDonald, general counsel at Rhode Island School of Design and an expert on student privacy law. FERPA places broad limits on what colleges are at liberty to disclose, and critics of those broad limits have a beef with the law itself—not its application, according to McDonald.

"There are some perfectly legitimate policy arguments to be made here on both sides, and if people want to make those that's fine. The appropriate place to take those up is Congress," he said. "I do think there has been inconsistent application on FERPA, but I don't think it's institutions trying to hide things; it's institutions disclosing things they shouldn't disclose."

Others disagree. After the Education Department introduced new FERPA regulations last December, free press advocates bemoaned a new era for the law that they said would keep ever more important information out of the public eye.

"The Department of Education had its chance to fix what's wrong with FERPA and completely whiffed," said Frank LoMonte, executive director of Student Press Law Center.

The newly written rules were in part a response to the Virginia Tech University shootings, which prompted the department to assure college officials that they could disclose FERPA–protected information when campus health and safety are at stake. But the rules went further, LoMonte said, making it more difficult for the public to even access statistical data about subjects as diverse as disciplinary policies and admissions patterns.

"What the department has now told schools is even if all the identifiable information [about students] has been redacted, it can still be withheld if you have some reason to believe the requester knows who they are asking about," LoMonte said. "That flies directly in the face of core interpretations of FERPA."

"I think it's very dangerous when you give discretion to a school to start making judgment calls about what the requester does or doesn't know," he added.

LoMonte and others are hopeful the recent attention brought to FERPA will bring about some changes they say are overdue. That attention not only concerns big-time sports, but also parents who say they've been unable to access critical information about their children. In one such instance at the University of Kansas, the parents of a student who died of alcohol poisoning said they were never given details about their son's previous alcohol-related infractions at the university. The student, Jason Wren, refused to waive his FERPA rights for disclosure, and the university was therefore unable to share the information with his parents, Kansas officials said.

Stories like the Kansas example change the direction of the FERPA conversation, which has for so long centered on greater and greater efforts to keep information private—not on the costs of privacy itself, LoMonte said.

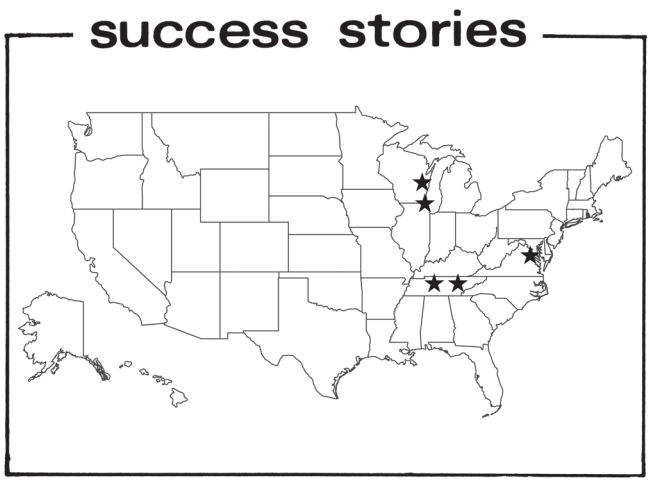
"To the extent that the department [of education] has heard from parents or members of the public at all [about FERPA] it has been from people who feel aggrieved about inadequate privacy," LoMonte said. "It's from people who feel their privacy had been compromised, and that has impacted the direction the department has chosen to take. Now what we're seeing is ordinary citizens and parents suffering wrongful denials of their legitimate requests based on FERPA. Once you have parents being aggrieved . . . that's what changes the debate." Reported in: insidehighered.com, June 26.

publishing

New York, New York

Lawyers for Swedish author Fredrik Colting and his U.S. distributor, SCB Distribution filed an appeal on July 23 with the U.S. Court of Appeals for the Second Circuit, arguing that a July 1 injunction barring publication of Colting's *60 Years Later: Coming Through the Rye*, is an "impermissible

(continued on page 188)



libraries

West Bend, Wisconsin

After listening to nearly sixty comments about evenly split pro and con, the West Bend Library Board unanimously voted 9–0 June 2 to maintain, "without removing, relocating, labeling, or otherwise restricting access," the books in the young adult category at the West Bend Community Memorial Library.

The vote was a rejection of a four-month campaign conducted by the citizen's group West Bend Citizens for Safe Libraries to move fiction and nonfiction books with sexually-explicit passages from the young adult section to the adult section and label them as containing sexual material.

Ginny and Jim Maziarka of the town of West Bend started and led that group, and it was their initial complaint in February that led to the June decision.

Ginny Maziarka presented the board a petition with 700 signatures asking for more restriction on books in the young adult category that mention sexual activities. Warren Fincke later presented a petition from an opposing citizen's group, West Bend Parents for Free Speech, with more than 1,000 signatures.

Speaking before the board, Maziarka said the night's meeting obviously was not going to be informational or a teachable moment, but rather would be putting her and her husband on trial for the way they complained. She accused the board of following the master plans of the American Library Association and the American Civil Liberties Union. "We vehemently reject their standards and their principles," she said. "This is a propaganda battle to maintain access to inappropriate material."

She said if the board did not move and label objectionable books, the West Bend library would not be a safe library, and that her group would spread the word that it is not.

Board members said it was their duty to maintain a "free exchange of ideas" in the library and free access of information. To support their position, they cited the First Amendment and court cases, in particular a 1999 Wichita Falls, Texas, case in which it was ruled it is unconstitutional to move young children's books into the adult section to restrict access and apply an extra label.

Board President Barbara Deters pointed out that the library already separates books by age, young adult nonfiction is located with adult nonfiction on the second floor of the library, and that all young adult books have a bright yellow label with the initials YA. Young adult fiction books also are 128 feet away from the sections of the library where children's books are shelved.

The library's mission, Deters said, "is to serve everyone." All ideas are to be freely available, she said.

Board member Patti Geidel said the book collection in the city library is not unique and "nothing in our collection can legally be called pornographic or obscene." She said moving, removing or labeling books is a form of censorship. "I believe in intellectual freedom for everyone," Geidel said.

Board members also had harsh words for the five city aldermen who voted not to reappoint Library Board members Alderman Nick Dobberstein, Tom Fitz, James Pouros, and Mary Reilly-Kliss. The aldermen cited displeasure with the book controversy and the slowness of the Library Board in responding to the complaint as reasons for not reappointing the four to the Library Board. The four remain on the board until replacements can be found to assume the three-year terms.

Deters said the board scheduled three meeting dates in March to discuss the original complaint. One was cancelled to accommodate the Maziarkas' schedule and another was closed because the number of people attending exceeded the city's fire code requirements.

"This has been a very difficult time," Geidel said of the past four months. Except for Dobberstein, no other alderman talked to any Library Board member before their vote to cast out the four reappointments. "How can they possibly presume to know what I think?" Geidel said.

"Those aldermen had no information," Deters added. The Library Board has been following procedures and state and national law, she said.

After the meeting, Deters said the Maziarkas are still able to submit complaints about individual books through the library's existing book reconsideration policy. "That's their freedom of speech," she said.

Library Director Michael Tyree said he was pleased with the respectful debate. "People did try to listen to each other," he said.

The battle had stirred much of West Bend, a city of roughly 30,000 people about 35 miles north of Milwaukee. Residents sparred for months on blogs, airwaves and at meetings, including one where a man told the city's library director he should be tarred and feathered. The row even spread to this year's Fourth of July parade, which included a float featuring a washing machine and a sign that read "keep our library clean."

"If you told me we would be going through a book challenge of this nature, I'd think, 'Never in a million years,'" said Michael Tyree, director of the West Bend Community Memorial Library.

The strife began in February when the Maziarkas objected to some of the content in the city library's young-adult section. They later petitioned the library board to move any sexually explicit books—the definition of which would be debated—from the young-adult section to the adult section and to label them as sexually explicit.

Ginny Maziarka, 49, said the books in the section of the library aimed at children aged 12 to 18 included homosexual and heterosexual content she thought was inappropriate for youths. She and her husband also asked the library to obtain books about homosexuality that affirmed heterosexuality, such as titles written by "ex-gays," Maziarka said.

"All the books in the young-adult zone that deal with homosexuality are gay-affirming. That's not balance," she said.

The library did not agree with the Maziarkas' suggestions, and the couple appealed to the library board. Ginny Maziarka, a mother of four, began blogging about the issue and the local newspaper picked up the dispute, sparking the opposition.

Maria Hanrahan, also a West Bend mom, set up a rival blog to argue the other side. "I'm against any other party telling me what's appropriate for my child and what isn't," said Hanrahan, who also created the West Bend Parents for Free Speech group. "We don't mean to say these are appropriate for everyone, but we don't feel they should be set apart from other materials or restricted from the young-adult section."

By this time, many more people had become caught up in the issue, which was generating heat. When Hanrahan appeared on a local radio, callers attacked her views, she said. "People were being very passionate on both sides of the issue. I think it divided the community a little bit," she said.

With the debate raging, the city council voted in April against renewing the terms of four library board members, in part because council members thought the board was dragging its feet, library director Tyree said.

The Maziarkas were still fighting to have books moved, having identified 82 questionable titles—more than double their original list. Then they stopped targeting a list of books and circulated a petition that asked the board to label and move to the adult section any "youth-targeted pornographic books"—including books that describe sex acts in a way unsuitable for minors. The books could still be checked out freely by anyone.

"We're not talking about educational material. We're talking raunchy sex acts," Maziarka said. One book she objected to was *The Perks of Being a Wallflower*, in which a fictional teenage boy tells about his freshman year in high school, including rape and homosexual and heterosexual sex between teens.

Tyree said book excerpts found on Maziarka's blog had been taken out of context and, in the case of Wallflower, the criticism missed some of the book's points. "In this book, there were consequences of . . . rape, of indiscriminate sex. Those were not portrayed so glowingly," he said.

The demand to move the books was always going to be problematic because no authority has determined that any of the titles are pornographic or obscene, Tyree said.

Outside West Bend, the fight caught the attention of Robert Braun, who, with three other Milwaukee-area men, filed a claim against West Bend calling for one of the library's books to be publicly burned, along with financial damages. The four plaintiffs—who describe themselves as "elderly" in their complaint—claim their "mental and emotional well-being was damaged by [the] book at the library."

The claim, unconnected to the Maziarkas, says the book *Baby Be-bop*—a fictional piece about a homosexual teenager—is "explicitly vulgar, racial and anti-Christian."

Braun, who says he is president of a Milwaukee group called the Christian Civil Liberties Union, said he singled out the book because it "goes way over the line" with offensive language and descriptions of sex acts.

The call for burning the book showed his passion, Braun, 74, said. "I don't sit on the fence when I do these things. When I make a decision to speak up on something, I go for it."

Back in West Bend, the Maziarkas and their supporters are gearing up for another go at the library, in part because the board now has its four new members. They do not want books burned, but they do want action.

"We want parents to decide whether they want their children to have access to these books . . . and we want the library's help in identifying [them through labeling and moving]," Maziarka said. "It's just common sense." Reported in: West Bend Daily News, June 3; cnn.com, July 22.

schools

Washington, D.C.

Following an article about GLBT books being stricken from a summer reading list in Washington, D.C., the capitol

city's school district seemingly reversed itself and restored a number of gay-themed books to the list. The School Library Journal reported in a June 21 article that, according to a post made by a librarian at a gay and lesbian listserv, the school district had asked for a listing of books with GLBT themes. Upon receiving the list, the books that had been named were dropped from the reading list, the post said.

The listserv, which belongs to the American Library Association, included a posting from the DC Public Library's Jeanne Lauber, the article said. The article quoted Lauber as having written, "The DC Public Schools decided to scrub their summer reading list of all GLBT related books. This seems outrageous.

"We're thinking that if a parent writes a strong letter, it'll be the most effective. I'm thinking it should go to the mainstream press, and perhaps someone in the school system too," the posting went on. Added the posting, "Apparently the public library system told the schools which books were GLBT (not knowing why they were being asked) and the schools removed them."

But a July 2 follow-up article reported that nine GLBT titles had been restored to the summer reading list. Among them was the #1 challenged book in America's school libraries for three years running, *And Tango Makes Three*, by Peter Parnell and Justin Richardson, illustrated by Henry Cole.

Tango is based on the true story of how two male penguins who had nested together were given an egg to tend, and proceeded to hatch and raise their adopted chick, Tango.

The School Library Journal article of July 2 reported that the District's Public Library and its school district both denied any knowledge of these subtractions and additions to the summer reading list. The article reported that it is not typically the case that the summer reading list would be released after the commencement of the summer break, and cited school district spokesperson Jennifer Calloway as explaining that this year's list required additional time for final approval of all titles included.

Said Calloway, "All of the books reviewed are on the final list." The article said that other GLBT–themed books on the list are Todd Parr's *The Family Book*, along with *Totally Joe*, by James Howe, *Luna*, by Julie Anne Peters, and *Some Day This Pain Will Be Useful to You*, by Peter Cameron. Reported in: School Library Journal, June 21, July 2.

Antioch, Illinois

Despite objections from several parents who find its language vulgar and racist, an award-winning book remained on the summer reading list at Antioch High School while an alternative was offered for those who requested it.

The book, *The Absolutely True Diary of a Part-Time Indian*, by Sherman Alexie, is a coming-of-age story about a 14-year-old boy who triumphs over obstacles after leaving an American Indian reservation to attend an all-white school.

"The consensus is, we feel it is a valuable read, a good read," Superintendent Jay Sabatino of Community High School District 117 said June 21. He and two board members, both teachers, spent the previous weekend reading the book, which is on the summer reading list for incoming freshmen.

In response to concerns, however, the district will form a committee each March to review future summer reading assignments, Sabatino said. The committee, which will include parents, would decide whether parents should be warned if a book contains possibly objectionable material, officials said.

Jennifer Andersen, one of seven parents who attended a recent school board meeting to protest the book, praised the idea of forming a committee. But she still believes parents should be warned about Alexie's novel. "There are so many great stories out there without the vulgarity—why bother with this book?" Andersen said. "I don't believe we need to swear at our kids to get them engaged."

Her 14-year-old son will be reading the alternative recommendation, Down River, which she says contains a good story without being offensive.

"Ideally, I would love them to say, 'We don't condone this language in the schools and we feel this book . . . does not meet our standards," Andersen said.

School Board President Wayne Sobczak said that he heard positive and negative reviews of the book from other parents. The story won the National Book Award for Young People's Literature in 2007, among other honors. "I appreciate the parents who came and had concerns," Sobczak said. "But the tone and flavor of the book is positive for children this age and shows someone trying to do the right thing." Reported in: Chicago Tribune, June 22.

Knoxville and Nashville, Tennessee

Just two weeks after the American Civil Liberties Union of Tennessee filed suit against the Knox County and Metro Nashville school districts for filtering access to digital information about gay, lesbian, bisexual, and transgendered issues, the schools stopped blocking the websites of gay-friendly advocacy groups such as the Gay, Lesbian, and Straight Education Network and Parents, Families, and Friends of Lesbians and Gays. Because the two school systems share the filter with 80% of the other districts in Tennessee, the action resulted in providing access to gay-interest information for more than 100 school systems throughout the state.

"I'm really happy that the schools are finally making our web access fair and balanced," said plaintiff Bryanna Shelton, a student at Knoxville's Fulton High School, in a prepared statement, alluding to the school's permitting

access to sites about ex-gays that promote reparative therapy. ACLU of Tennessee staff attorney Tricia Herzfeld cautioned that the civil-rights group is not yet dropping the lawsuit until it receives "assurances from both school boards in this case that they will respect students' rights and refrain from this sort of censorship in the future."

The announcement about the change in filtering policy was made June 3 by Knox County Schools Superintendent Jim McIntyre, who said that filter-maker Education Networks of America had adjusted its black-list settings. "We began working to find a solution to this issue, in good faith, as soon as it was brought to our attention, and our efforts were actively under way long before the legal action recently taken," McIntyre stated. Olivia Brown of the Metropolitan Nashville Public Schools said that the filtering subcommittee of ENA's customer advisory council had recommended "unblocking sites that are informational in nature, while keeping blocks on sites that contain content that violate additional policy rules, such as mature content, chat, or personals."

The press statement from the ACLU's Tennessee chapter also explained that, in the process of the plaintiffs' legal counsel verifying that ENA's Blue Coat black-list settings had been modified as announced, it was discovered that ENA had also just unblocked the LGBT category for school systems in Indiana. Reported in: American Libraries online, June 9. □

Brennan Award . . . from page 147)

highly probable, though, that the Justice would eventually find a more visible medium for these views on libraries and liberties.

This is where Judith comes in. When the Court agreed in 1981 to review its first library case, it may have been Steve Pico and his parents who filed the suit. But it was unmistakably Judith Krug who shaped the strategy that brought a tenuous but extraordinarily valuable victory. She framed and shaped the arguments that reached the Justices through a remarkable amicus brief filed by Bill North as ALA's General Counsel.

Judith and I had several memorable chats about what that brief should say. I'll confess I had a few doubts about the wisdom of conceding that books could be removed from a school library if they were deemed not "educationally suitable" or if they contained "pervasive vulgarity." But Judith knew better—even about the views of my former boss, to whom the Pico opinion was predictably assigned. Without those concessions, I doubt there would even have been a plurality, let alone a majority, for the vital principles at the core of Justice Brennan's *Pico* opinion.

Judith, in her wisdom, also knew that such seemingly dangerous concessions would not come back to haunt the library community—as to my knowledge they have not. Indeed, despite the many times that *Pico* has provided an immensely helpful citation, in free speech cases far beyond libraries, I am unaware of a single time that an act of censorship has been upheld by a court on the basis of "educational unsuitability" and "pervasive vulgarity." Would anyone else have taken such a risk or been so confident of a happy outcome?

That, in short, is the most direct link I know between the two remarkable people we honor this evening. It is also one of the many collaborations with Judith of which I treasure memories from the more than three decades I was the beneficiary of her guidance and counsel.

Let me now take just a few moments to offer a couple of other perspectives on this singularly devoted colleague. They address in varied ways a question I've asked myself, as I suspect have many of you, in recent weeks—"Where would we be had Judith Krug not been our colleague and our conscience?" Let me offer a few responses that stand out and may differ a bit from the mainstream.

For one, had she not mobilized a broad coalition to launch a National Conversation on issues of privacy, there is much in this critical area we would have neglected—or would at best have addressed in our separate ways. The librarians would have gone in one direction, the electronic technology folks in a different direction, while free speech and free press groups like our Center might not have been involved at all. But Judith enticed—alright, let's be honest, she coerced—many of us into collaborating with unfamiliar partners, and we agreed to do so because Judith's wish (as often happened) became our command.

Let me also reflect on her extraordinary engagement with library filters. To the amazement of most of us, the long awaited National Academy of Sciences study of library filters several years ago contained some extremely helpful recommendations from an exemplary source. That did not just happen, I can assure you. As many of you know, Judith saw the potential both for victory and for defeat and engaged the task with her usual fervor—okay, ferocity. She gained the ear and the confidence of the Academy's senior scholar in computer science, Herb Lin, and together they shaped a report that has been immensely helpful. From working closely with Herb on another Academy project, I can attest that he felt the same irresistible pressure that so many of us experienced during our years as Judith's colleagues and devotees.

Any lawyer who works in the First Amendment field is keenly aware of Judith's influence in shaping the course of litigation. Indeed, we should now admit that for four decades she engaged shamelessly, but most effectively, in the unlicensed practice of law. It would be impossible to count the times when potential plaintiffs were either nonexistent or understandably reluctant to risk publicly declaring

their opposition to popular laws, especially in the perilous post–9/ll era. Yet time and again Judith emboldened the people she needed to mount a legal challenge—and I am not aware that any of them ever suffered from heeding her call to the courtroom.

Thus we have seen successful challenges to the Communications Decency Act, the PATRIOT Act's Business Records provision and the attendant gag rule, the Child Online Protection Act, and numerous other invasive or intrusive measures that stifled free speech, not only for librarians but for the whole academic and intellectual community. I vividly recall one meeting of FEN (the Free Expression Network) focused on litigation strategy for what I recall was the COPA challenge. Incidentally, speaking of FEN, I recall that occasionally when even some of us in the DC area were absent, Judith never failed to get there from Chicago save for one day when O'Hare was snowbound. That morning, we half expected Judith to arrive by snowmobile or dogsled, profusely apologizing for her tardiness.

At the strategy meeting, actually held in New York, we were agonizing over how we could, on one hand, challenge the use of filters in contesting the Child Internet Protection Act (CIPA), while at the same time suggesting that filtering offered a preferable alternative to COPA's crude sanctions. After an hour and a half of wholly unproductive discussion, Judith waved her hand and charged us all, "Go for it!" We weren't entirely sure what we were supposed to go for, though we assumed she meant we should simultaneously press both claims despite the paradox that unsettled the lawyers among us. Of course she was right, and while the filter challenge foundered, the COPA strategy prevailed brilliantly. So much for foolish consistency; I guess Emerson was right—and he, by the way, would have drawn inspiration from Judith had they ever met. He also would have found himself serving somewhat reluctantly on the Privacy Conversation Task Force, but that's a different subject.

I could not in good conscience conclude without briefly applauding Judith Krug's many honors and accomplishments that helped persuade our Center's Trustees to add her to the Brennan Award roster. In her more than four decades as ALA's champion of intellectual freedom, she established such now revered traditions as Banned Books Week, and through the Office she created and so ably guided she offered not only solace but direct support to countless librarians and others facing censorship threats. Soon after taking office she also established the Freedom to Read Foundation as a vehicle for garnering and dispensing tangible support.

Though Judith did not seek recognition, it would have been hard to avoid the encomia that increasingly came her way. A few such stand out, among them the Booksellers' Van Doren Award, ACLU's Harry Kalven Award, the Robert B. Downs Award for exemplary service to intellectual freedom in libraries, the Carl Sandburg Freedom to Read Award from Friends of the Chicago Public Library, and an honorary Doctorate of Humane Letters from the University of Illinois Champaign-Urbana, among many, many other honors and tributes.

To this extraordinary list I am now delighted to add the Thomas Jefferson Center's William J. Brennan, Jr., Award. Plans for this honor took shape in Justice Brennan's chambers just after he retired from active service on the Court, and with his enthusiastic approval. He agreed to confer the first awards in person at the Court, and did so twice. We promised the Justice that we would recognize only those rare individuals who had enhanced the goals and values of free expression to which the Justice devoted his judicial career. Such people are not easy to find despite constant inquiry and research. This is only the fifth time in nearly twenty years this honor has been conferred. Twice in the past the award has recognized a single act or commitment to free expression; the other two reflected a longtime dedication. In Judith Krug's case, we acclaim a lifetime of exemplary service, though one could equally well recognize any of a host of separate and heroic deeds. She was truly a champion for all seasons. Let me read the inscription on the plaque, which I am delighted to present to [Judith's daughter] Michelle Lichtman, along with a contribution to the Freedom to Read Foundation honoring Judith's legacy. □

(privacy . . . from page 147)

and make ethical judgments? How do they interact with others and adults? How do digital media affect their sense of identity and community? And how do attitudes towards civic participation and their awareness of other cultures change as a result of their operation and behavior when they are essentially living within social media?

Secondly, we want to help people get better at navigating, judging, and using digital information and tools in schools and beyond. We want to help them evaluate critical digital information and we want them to understand their privacy rights.

I think one of the concerns now is that not only is there a lack of information or, rather, a lack of understanding among people regarding what constitutes privacy but in fact that the normative behaviors regarding privacy are changing quite radically.

Third, we want to understand the implications for institutions that prepare young people for the future, so it's auspicious that ALA has provided such leadership. So, to get at some of these questions, we've made a variety of investments, mostly in research and also in demonstration programs and special projects like the Digital Media Learning competition.

For the sake of simplicity, I'll just speak about one of the biggest projects we've supported to date and that's the

Digital Youth Project, which I'll use as a prism for setting up some of the privacy questions that are central to this discussion. After about 5,000 hours of ethnographic observation of online behavior, the Digital Youth Project found that social networking and video sharing sites, online games, and gadgets like iPods and mobile phones are now, not surprisingly, fixtures of youth culture. The research showed that today's youth may be coming of age and struggling for autonomy and identity in new worlds of communication, friendship, play, and self-expression.

Now this is as of late last year, which is when the Digital Youth Project research was completed. So, what's interesting about that is that you don't necessarily just have a search-and-response kind of dynamic anymore with young people, you have this broad and incredibly complicated ecology that is muddying the divisions between public and private, local and global, formal and informal. So as we think about it, if you come at this from the perspective of philanthropy, or a school, or a library, understanding contextually what a youth's experience of social media is, is very difficult and understanding how to be intentional in that space, whether it's regulatory, statutory, or programmatic, is, I think, very difficult as well.

For thinking about useful policy responses to this, I think we need policy responses that are as nimble and dynamic as the underlying ecology itself. We need to recognize the different forces at play in this ecosystem. And to do that, at least for today's discussion, I am going to use as a crutch the forces that Larry Lessig lays out in Code 2.0.

Lessig essentially assesses online behavior as being informed or influenced by four forces online. Those are law, markets, norms, and codes, which is the underlying architecture of the Internet. So, what is law in the context of privacy? Well, to a large extent, that's what we're here to discuss today. Laws govern everything from the privacy terms and conditions of proprietary spaces to the interpretation of privacy protections embedded in the Fourth Amendment. Now with respect to young people, and I think from the perspective we're bringing to this from the Digital Media Learning Portfolio, we're looking at a domain of federal law which, I think, has been, in increasing incidence in the last ten years, sometimes authorized through appropriations law and, for certain beltway insiders that's a very strange thing, attached to certain conditions to the distribution of funds.

Now, as I understand it, if you look at programs like E-rate, which are critical to economically distressed libraries and schools, set conditions, as did the CIPA law, on those funds, which is actually a pretty effective way to push policy. And the policy that's been pushed involves filtering and monitoring. And when you look at the monitoring, that's obviously got some pretty important privacy implications for young people. So, going forward, in the context of law, we're interested in seeing whether or not there's a different conversation that can happen about statutes like CIPA and whether or not the distribution of funds can happen in a different way. I'll also talk to you about policy opportunities that are coming up.

Now, in the context of markets: markets are present in this space and the request for personal information is very much market driven: if there were no value to this information, then obviously the privacy pressures might not be so extreme and obviously information is used for advertising services and the like.

Now, norms. This is where from the perspective of youth things get quite interesting. What is normative today about privacy? I mean, what do young people understand about privacy? How are they assessing the privacy decisions they are making? Do they have the same sensitivities that sort of an older population has to privacy? The short answer is, of course, no. The Digital Youth Project revealed that while there are no simple answers, the context for privacy decisions now is very different than it was in the past, if only because the ability to take the day-to-day information of social life and inventory it and publish it in a way that it never was in the past.

Now, finally code. I think this is another interesting challenge and one maybe that on its face seems counter-intuitively simple. Code, which Lessig essentially describes as the underlying architecture of the web, which he says is synonymous with law in this day-and-age simply because when you go into an online environment the structure of that environment imposes on you decisions in a way that are essentially the same as law. It's an interesting way to think about privacy because at the end of the day, how many of our privacy decisions—or how many of a young person's privacy decisions—are shaped by the environment in which they find themselves?

When they go on Facebook, when they go to any social media site, they are given a tick list, a series of choices. Does the structure of those choices make any of their privacy decisions for them? I think the short answer is yes. So going forward, you know, in a more auspicious or more productive way, a question would be can we meet the design challenge of privacy? Can we design environments whether they represented interoperability across differing platforms or if they simplify privacy decisions in such a way that any member of the public can make those decisions and feel confident of their meaning? Is that an opportunity for the underlying code, the underlying architecture of the environment? Is that somewhere we should actually be focusing our attention?

So in going through some of these issues, you can see the contextual complexity of these issues. It is not, simply, at least from our perspective, a regulatory or statutory issue, there is no one solution. So what do we do? What we've started doing, and we're very early in this conversation, is try to support groups that are operating in this space. And a notable one of them is the Berkman Center at Harvard. A few weeks ago, we finally got a grant through to support

Berkman to convene a Youth Media Policy Working Group. Now they're going to be looking at issues that include identity, creativity, safety, those kind of statutory issues like copyright, fair use, net neutrality, things like that. Now, of course, privacy is one of those issues. But you see, if you just assess creativity alone, there is so much going on it's hard to set up a coherent dialogue about it. So, we're hoping that at the very least, the Policy Working Group can set up some of these dialogues that have some sort of coherent basis.

Now, in closing, I'm just going to go through Lessig's different domains of regulatory forces online to ask some questions of the audience and perhaps more generally about how we understand these privacy issues. In terms of law, what kind of climate does legislation like CIPA create for libraries and schools? I suspect the answer would be pretty clear for this audience. But an interesting question for an upcoming policy opportunity is what can the National Broadband Plan do in terms of privacy. The National Broadband Plan is set up more as an infrastructure program, but if you think of the different policy levers that are attached to that, I think there's an interesting opportunity to express privacy ideals associated with all of the investments involved in that plan. And if you look at the Notice of Public Inquiry requested by the ICC in April, I think that you get that thought: this isn't just about bricks and mortar, there are some deeper policy issues and I think that privacy is one of them.

In terms of markets, one question is how do you partner with the private sector to set up a more intuitive and transparent way for people to make privacy decisions? Is there a way we can get collaboration going across the various social networking sites? Can they be at the table when we discuss something like Creative Commons for Privacy? Can they be a part of creating that lexicon? I think the answer has to be yes, to some extent.

And in terms of norms: privacy norms are changing. What is the role of social institutions like libraries? Educating young people about their privacy rights and the consequences of the certain privacy decisions they make? One of the interesting things about Lessig's work is that he doesn't speak that much to the role of social institutions that shape people's behavior online. And one of the interesting things about the ALA and its groups, and also groups in the education space, is that there is a role clearly for educating people about their rights and educating them to be effective and empowered in this space, and so, if norms are changing—and they are—it doesn't remove the necessity to actually make educated users a priority. And that's probably the most effective thing to do moving forward.

In terms of code, a fundamental question is: is privacy really a design challenge fundamentally? Can we get some sort of coherence such that if you created an architecture that empowers people or at least allows them to have some portability in terms of their privacy preferences, is that some sort of quasi-technological way of empowering them?

So there's clearly much work to be done. I'm just outlining some of the questions that we're tackling. I don't think from the perspective of Digital Media Learning that we could take on all of these, but our hope, and our hope in investing in something like the Youth Media Policy Working Group, is that we can gain some coherence in these questions so we can empower people who are interested to become active in the dialogue. I suspect the same sort of motivation is what inspires the ALA to focus on privacy in this way.

In closing, one additional question, and it's maybe a request for assistance as much as anything else. How do we define privacy for young people? Is privacy about liberty? Is it about dignity? What is the most compelling way to frame privacy for young people? Because the current scenario seems to be that privacy does not compel people as much as we think it should. But, is it a semantic issue? Is it a contextual issue? And with that, I'm going to close.

remarks by Mary Callahan

Mary Callahan is the Chief Privacy Officer of the Department of Homeland Security.

Thanks Craig, that was a very thoughtful way to think about these issues. I, obviously, am going to take a very different slant, because in my capacity as Chief Privacy Officer at DHS, I am not looking as much at youth media/digital media issues. I did, back in the day, when I was back in the private sector. To use the Lessig paradigm, I am now focusing more on laws and code, whereas I used to focus on markets and norms.

The title of this panel is "Privacy and Change," and I wanted to talk a little about that. I think that one thing to note is that I am Chief Privacy Officer, I've been there for four months and, in the overall world of political appointees, I was announced in February, which is an incredibly early time to be announced and well ahead of the vast majority of political appointees. And I think that's important for a lot of reasons. Department of Homeland Security, for a lot of reasons, deals with a lot of personally identifiable information and sometimes our interactions with the public are, let's say, less than ideal. I'm willing to admit that. I'm willing to work on that. With that said, the department has a Chief Privacy Officer that was the first one statutorily created, and, in fact, I report directly to Secretary Napolitano. And she thought it was important enough to appoint a Chief Privacy Officer really early in her administration to make sure that these issues were talked about and part of the dialogue.

One of the first things I worked on was to help work on a Privacy and Civil Liberties task force associated with cyber security review that the White House had initiated. I am quite pleased with the White House that they have, in this cyber security review, announced that privacy and civil

liberties are clearly going to be addressed in this process, and there is going to be a privacy official to report directly to I guess what we're calling the "Cyber Czar." Because we have to have "czars." Didn't we get rid of those? Like in 1917? But apparently, we still have czars.

And so, the administration is taking this issue very seriously and trying to incorporate it into all the things they are going to do. And I am cautiously optimistic that the White House, or the Office of Management and Budget, will have a privacy official to help deal with the broad scope of policy issues associated with privacy both in the online world and also in the government space.

With that said, my job at DHS is fairly concrete, and part of why I wanted to take it and work on these issues is because it deals with fundamental interactions with the public and how to work collaboratively together. The Customs and Border Protection Agency, which is a subgroup of DHS, interacts with 400 million travelers at the borders. The Transportation Security Administration interacts with approximately 650 million travelers each year. So these are a lot of human interactions. Of course, librarians are on the frontline of public interactions and public education. I think that's one of the reasons I wanted to come and talk to you today. My office is working on how to interact with the public better and trying to work on messaging and communication and gaining trust.

The DHS mission, of course, is to protect the homeland and to make sure that we're safe and secure. With that said, we have not only laws, which include the Privacy Act, Freedom of Information Act, as well as regulations with regard to what we can do with information. But, I also want them to think about the norms: does it make sense; let's have data minimimization; let's limit the amount of personal information that we have to collect. The Secretary is very supportive of this approach and also wants to make sure that privacy is seeped within the department.

One way that I propose to have privacy considered really at the front end, in terms of design, well I think that privacy has to be incorporated into the design of new programs and new technologies that any of part of DHS would be implementing, I think that it's really important to have privacy baked into the process, collaboration.

Therefore the secretary has ordered that each component—which would be the agencies: Customs and TSA, U.S. Secret Service, Coast Guard, Immigration—that they all have a proponent privacy officer. She just ordered that last month; she said, "you need to have somebody working within the component." We also have one in our U.S. Visit Program, which is dealing with immigration, as well as collecting biometrics, which we can talk about later. We have one in our cyber security work that DHS is doing; we also have one in science and technology—all of the places where you'll be dealing with sensitive personal information; about half of them now have privacy officers, and about half been ordered to have them with 120 days.

I think that's really important, because I think that indicates that privacy has to be part of the process, part of the dialogue.

Again, so what happens is that there's new technology and I am statutorily required to check all new technology and make sure that privacy protections are baked in. And sometimes what happens are these "Privacy Impact Assessments," which is what they are called, get to my desk and I'm like "Whoa! Wait a second here! Did you consider these kind of mitigating factors? Did you consider these kinds of elements?" And instead, what my recommendation is to have privacy considered earlier, which is what the component privacy officers will do. And I'm very excited about that, because I think it's important to work day in and day out, and you know how important it is to establish a relationship as you deal with these issues, as people are trying to protect the homeland and also consider privacy at the beginning of the conversation, rather than at the end—rather than privacy being an add-on.

So, I mentioned Privacy Impact Assessments, and just a little about that, because I'm sure as librarians you are big fans of transparency—as am I. I think it's a really important element for this administration. I think it's clear in that the President releasing two memoranda his first day of office, the first dealing with the Freedom of Information Act, which I also govern, I am the Chief Freedom of Information Officer in DHS as well, and having a presumption of disclosure. And the second was generally on transparency and open government, and I think that's a really important element in trying to gain public trust on this issue.

So my office, as I said, does Privacy Impact Assessments and they did them prior to my arrival there, required under the Homeland Security Act as well the Government Act. I think they can be useful tools in terms of having more transparency and disclosure on what's going on with new technologies and programs in the department. And so, I'm working with my special assistant Lynn, who is here today, to make the Privacy Impact Assessment more transparent and more useful and to be more disclosure-oriented in terms of what's going on at DHS.

That being said, they're actually a really useful tool. I've had a couple people who have said to me, "if I want to know about a DHS product or technology, I actually go to the Privacy Impact Assessment because it gives the most information." Now, David's going to tell you that he doesn't like them, and that's cool. That's one of the dialogues I want to have. The Privacy Impact Assessments are available on our website, dhs.gov/privacy. It is not my favorite website, not really user friendly, but at the same time they're all there. Actually there's been a dialogue about having a privacy.gov website, similar to the data.gov initiative, that Chief Information Officer Vivek Kundra has launched, and if you want to talk about data.gov, I'm happy to talk about it as well. I think it's a great way of kind of centralizing the sources and helping make a more informed public because

of the interactions and because of the ability to gain access to information.

The last thing I want to talk about kind of circles back to what Craig was talking about and that is social media. Prior to becoming Chief Privacy Officer for DHS, I was a partner in Logan and Barnes, and I worked on a lot of social media, to the point that I was one of the top outside counsel on social media issues. And, I thought I knew it all—and then I came to the government. And I started thinking about the First Amendment, and the Privacy Act, and records retention and suddenly realized it was really difficult. And the President has asked that all departments work on social media and engage with the social media context.

So, my office had a workshop called Government 2.0 on privacy and best practices for government use of social media, and I'm also happy to talk about that. I think there are some really interesting questions: how do you interact on a social media site if you're a government agency? What information do you collect, what info do you require? And I think that those are all very important questions for us to get the dialog right in terms of social media as we move forward in the digital age.

remarks by David Sobel

David Sobel Senior Counsel at the Electronic Frontier Foundation.

I'm just going to try to quickly touch upon a couple of issues—some of which have already been mentioned, some of which haven't—to kind of complete our framing of what will be an interesting discussion as we start hearing from folks in the audience who are interesting in talking.

My organization, the Electronic Frontier Foundation, really starts from the premise that as a result of technology there is so much more personal information available and being collected than there ever was in the past. And certainly an audience like this, of librarians, certainly those of you who have been in the profession for a long time see that everyday, the difference between thirty years ago, when someone anonymously and quietly walked into a public library and accessed information and walked out and left and there was no record of that person. The reality today, whether that seeking of information happens online, in a library or elsewhere, suddenly the result of technology is that there is the ability to collect and retain and data-mine vast amounts of information that detail virtually every aspect of people's lives.

You know we're now almost heading into the realm of collection of location information. There is an unresolved and very interesting series of legal questions, as to what legal showing government agencies need to make if they are going to go to your cell phone carrier to get information about where you've been either historically or in real time. It's incredible to realize that this is an issue that really has not been resolved within our legal system yet. So, we start with the premise that technology enables the collection of so much information and that the advancements of technology outpace the ability of the legal system to really come to grips with it and to adequately protect individuals in the collection of that information.

The other overarching issue is the question of transparency; that is largely the aspect of this that I work on, with my use of the Freedom of Information Act in an attempt to learn what government agencies are doing in the area of information collection and how it is used. I won't go into that in great detail, I understand there was a great discussion yesterday of transparency issues and we've already begun to see within the Obama Administration. But, Mary Ellen noted that the President on his first full day in office made a commitment to an unprecedented amount of transparency, and I have to say as someone who has direct experience litigating cases in court that we have not yet seen much of a change as a result of those stated policies.

I am litigating several cases, one of which at least I will talk about in a bit more detail, that originated during the Bush Administration concerning government collection and use of personal information in which a great deal of the information was withheld; we filed lawsuits against those withholdings, and then when the new administration came into office and the President announced a new policy, we specifically raised that issue in these court cases. And judges in these cases asked the agencies to go back and reconsider their earlier positions in light of the new Obama policy. Without exception, they came back and told the court that there wasn't going to be any change with respect to the government's position, with respect to withholding the information we were seeking, including in one case, the FBI database called the Investigative Data Warehouse that contains billions of records that the FBI came back and said that it was not going to release one additional word in light of the Obama policies.

So, I have some real questions as to what kind of a change we're likely to see. I remain optimistic but the early indications have not been promising.

The reason that transparency is so important is that the government, as best as we can tell, collects vast amounts of personal information. I gave the example of this FBI database, the billions of records, according to the Bureau's own descriptions, but we don't really have a sense of where this information comes form, in other words what the sources of data collection are. And, possibly more importantly, we don't really have a sense of how this information is used. For one thing, talking about the FBI, we do know that the Bureau maintains something called the Terrorist Screening Database, which we commonly refer to as the Watch List.

By the FBI's own recent admission the Watch List contains four hundred thousand names, again, apparently derived as a result of the FBI's processing and data mining of this vast amount of information that it has possession of. The FBI, in response to public concerns that have been

raised about the Terrorist Screening Database or Watch List, has announced in a way that, presumably, they thought would be reassuring, that only about 5% of those names are U.S. Citizens or legal alien residents. But still that means there are about twenty thousand people, U.S. Citizens or legal alien residents, that the government for reasons that they are not prepared to explain, has deemed to be suspect. These are not people being indicted or having charges being placed against them that they are entitled to respond to, they are just in this gray area of being suspected terrorists with absolutely no recourse. So, these are the reasons why transparency or the lack of transparency is so critical: vast amounts of information are being collected and used in ways that we simply can't see.

Let me talk a little about DHS because as good a job as Mary Ellen and her predecessors, I have to say, have done in bringing privacy issues into the mix at DHS, the reality is that DHS, in many critical instances, is merely a consumer of intelligence and information that is collected and processed by other agencies. So, the Terrorist Screening Database, or Watch List, is a prime example. It's not maintained by DHS, it's maintained by the FBI. The FBI is unwilling to disclose any information about how that list is put together. The FBI, presumably, in putting together that list uses a variety of information sources, including information collected through The Patriot Act section 215, which I am sure all of you are familiar with and the controversy that has arisen surrounding the use of section 215 order in library contexts. And even more extensively, the use of National Security Letters, of which there are tens of thousands issued annually, again, behind a veil of almost total secrecy.

Again, transparency. As much as DHS is willing to issue Privacy Impact Assessments and talk about what it as an agency directly is doing, doesn't really solve the problem of a lot of the information that DHS is using as a consumer and adding to its mix of available information.

So, I've talked about the FBI, I haven't even touched on NSA—which we could probably have a whole session on just talking about the problems that are raised by the Terrorist Surveillance Program, which continues, which Congress reauthorized, the last Congress, which President Obama, as a Senator, voted for, the Foreign Intelligence Surveillance Act Modernization legislation.

So these problems persist, as much as we would like to believe that there was a fundamental change that occurred in November, in a lot of these areas we're really seeing more of the same without a great indication that there is a change in policy.

Now let me talk a little bit specifically about a DHS program that raises a lot of these issues and that is within Customs and Border. Customs operates a systems called the Automated Targeting System (ATS). How many of you familiar with this? Not many of you. Mary Ellen indicated that Customs deals with 400 million travelers crossing the borders. Is that annually?

[Mary Ellen: Annually, it's also 400 million interactions, so it could be duplicate.]

How many of you have within the last 5 years crossed an international border? That would include Canada and Mexico. Almost everyone in this room is affected by this, but virtually no one knows anything about it. So let me tell you a little bit about it. Unfortunately, we know very little about it, notwithstanding the Privacy Impact Assessment that DHS has issued.

The Automated Targeting System assigns what they call a "risk assessment" to everyone crossing the border. So, when you appear in front of a customs agent, they are looking at a screen that displays a risk assessment based on your personal information that is within the possession of DHS. That includes information not just collected by DHS agencies, but also by the FBI and NSA, which presumably correlates terrorist Watch List information. And they make judgments about you and what level of security you're going to be subjected to, based on what they see on that screen.

We've had a Freedom of Information Act lawsuit pending against DHS for information on the Automated Targeting System since late 2006. So this is one of the cases that I mentioned that has now passed over from the Bush administration into the Obama Administration. And even in light of the President's new commitment to transparency and even in light of Attorney General Holder's new guidelines on implementation of the Freedom of Information Act, no additional information has been released on that lawsuit since the Obama Administration came into office.

That's one concrete example of the kinds of things that affect virtually everybody and that we know very little about. Now, I think Mary Ellen will probably tell you that DHS does in fact have a redress system in place for people who have problems with this system. First of all, you have to know you have a problem with the system, which is not in all cases going to be apparent. If DHS or TSA pulls you out of line, does a very extensive search, it's not always obvious that the reason is that there's some bad data in their system. But, assuming you're savvy enough and you avail yourself of the redress system that has been made available there are very serious limits to what that system will do for you.

Again, Mary Ellen will correct me if I'm wrong, but I think it's fair to say that the system is most effective in dealing with cases of mistaken identity, which you have to assume are a lot, if the government is working off a list of 400,000 people that it believes there is a problem with, there are going to be lots and lots of cases of mistaken identity. So that is something that perhaps the redress system can help with, although the anecdotal evidence we hear from people all the time, and we've been hearing for a long time—at least the last 8 years—is that they go around and around and around and they consistently, consistently have problems at the airport.

So there's this whole class of people in the country who live under a cloud that, despite their best efforts and despite the best efforts of lawyers who they sometimes retain, they cannot remove this cloud from them.

So even given that maybe the mistaken identity cases can be resolved, you have the problem of the 20,000 or so American citizens or legal resident aliens who are on that list and I think the answer that you'll get from DHS, we certainly got in the past from Secretary Chertoff, is that the Department is not really going to help those people. Secretary Chertoff said, "we are not going to litigate the issue of whether someone should or should not be on that list if the department believes that they should."

The problem is that these determinations are all based on classified information using methodologies that the department is not prepared to talk about publically, so their answer is, basically, that in those instances in which somebody is on the list and that person wants to challenge that status, they really have no due process rights that they can avail themselves of, because this is an area that the government is just not prepared to discuss. So, I think there remain very serious questions concerning the amount of redress that people who are adversely affected by all this information collection can really avail themselves of.

Now let me just touch quickly on the private sector part of this because you can't really separate out the issue of what government agencies collect from the issue of what private companies collect. And, you know there are some who take a libertarian approach to this issue and my organization tends to have some libertarian tendencies, within it and within its history. But I think that we nonetheless recognize that if a private company is collecting vast amounts of personal information and government agencies who are interested in that information know that it's just sitting there, the government agency is going to come get it. Using a 215 order, using an NSL, using whatever mechanism it is, so, you can't really look at this issue without also assessing the question of how much personal information is being collected by private parties.

The poster child for this is always Google and I think that's for good reason because if you think about the massive amounts of information that Google is able to collect about the information-seeking activities of tens of millions of people, you get a sense of what we're talking about. Google has a business model that necessitates that they collect information and learn as much as they can about particular users. They provide all of these wonderful services for free, but there is obviously a price, which is the collection of all this information and the profiling of users and all of that.

I'll just close by raising a point to note that for all of the protections that you as librarians might like to put on the way that people access written material, you now look at a service like Google Book Search and you realize that whole realm of information-seeking is now part of that bigger problem I'm talking about. So it's really a multi-faceted problem; I don't think that there's really any solution outside of legislation.

I would like to share Craig's optimism that there are players in the private sector that might be persuaded through the design of their systems to be more privacy-protective, but, as I said, I think we're talking about business models that necessitate collection of vast amounts of information. As long as that's true, government agencies are going to come knocking looking for access to that information. □

(IFC . . . from page 148)

communities; and
- The refusal of the persons bringing the challenge to utilize the library's reconsideration policies.

These concerns point to a need for the development of new guidelines to assist libraries facing complex challenges of this nature. The IFC plans to take up this work in the coming year.

Tribute to the Freedom to Read Foundation

This year marks the 40th year that the Freedom to Read Foundation has served as the First Amendment legal defense arm of the American Library Association. The Intellectual Freedom Committee submitted ALA Tribute #5 to celebrate FTRF's achievements and its work promoting, protecting, and defending the First Amendment in libraries.

PROJECTS

National Conversation on Privacy

ALA's National Conversation on Privacy is a civic engagement campaign calling on libraries and librarians to stand up as leaders and educators in communities all across the country. Funded with a seed grant from the Open Society Institute, the initiative seeks to call attention to the value of privacy as the foundation for civil liberties and to empower citizens to make educated decisions about their personal information and legislation around privacy. The campaign will culminate in Choose Privacy Week, an event that will take place May 2–8, 2010.

On Monday, July 12, at the 2009 Annual Conference, IFC and COL sponsored a joint program on privacy on Monday, July 13. "Privacy in an Era of Change" featuring three outstanding speakers, sharing their thoughts on privacy, surveillance, consumer protections, and civil liberties in our society today. We were delighted to have Mary Ellen Callahan, Chief Privacy Officer of the Department of Homeland Security; Craig Wacker from the MacArthur Foundation; and David Sobel, Senior Counsel at the

Electronic Frontier Foundation. OIF staff collaborated with RUSA and OITP to promote these groups' other programs on privacy at Annual Conference as well.

New campaign materials for the National Conversation on Privacy were debuted at Annual Conference to enthusiastic response. Order forms for these posters, bookmarks, and buttons will be included in all Banned Books Week orders, and materials will be included in ALA Graphics catalogs, giving librarians the opportunity to purchase these materials for use in their own libraries and communities.

The website for this initiative, www.privacyrevolution.org, has undergone significant change and now includes new content, features, and functionality. Institutions can use the website to sign on as allies and individuals can now sign onto the campaign online as well, through a highly encrypted vault that will ensure the privacy of personal information and enable us to deliver a headcount to Congress of Americans calling for legislative change around privacy.

All of this work is building to the campaign's national event, Choose Privacy Week. During May 2–8, 2010, libraries will host programs and events to educate and engage their communities on privacy issues. OIF will host training programs at the 2010 Midwinter Meeting in Boston to help librarians prepare for this week of action and advocacy. In addition, a resource guide is being prepared that will give librarians the tools they need to start the conversation in their communities. OIF is soliciting contributions to the resource guide and looking for commitments by July 31st and submissions of content by October 1st. The call for papers is attached as Exhibit 1.

Please join with us—by signing on as an individual and by signing on your institution as a participating library—in order to educate and engage our communities on these vital privacy issues in our digital age.

Banned Books Week

2009 marks the 28th annual celebration of Banned Books Week, which will be held September 26 through October 3.

For the third year in a row, the Office for Intellectual Freedom and the McCormick Freedom Museum will host a Read-Out! to kick off Banned Books Week on Saturday, September 26, 2009. This year's Read-Out! will feature authors of the top ten most frequently challenged books of 2008. Charise Mericle Harper, author of *Flashcards of My Life*; Sarah S. Brannen, author of *Uncle Bobby's Wedding*; Cecily von Ziegesar, author of the Gossip Girl series; Stephen Chbosky, author of *The Perks of Being a Wallflower*; Lauren Myracle, author of *ttyl*, *ttyn*, and *l8r g8r* (Internet Girl Series); and Justin Richardson and Peter Parnell, authors of *And Tango Makes Three*, will talk about their experiences being targets of censorship and will read from their works.

All BBW merchandise, including posters, bookmarks, t-shirts, and tote bags, are sold and marketed through ALA Graphics (www.alastore.ala.org). More information on Banned Books Week can be found at www.ala.org/bbooks.

Lawyers for Libraries

In February OIF held the 13th regional Lawyers for Libraries training institute in Los Angeles. To date, over 300 attorneys, trustees, and librarians have attended these trainings and a large majority of them remain connected with ALA and one other via an e-mail list. This fall, OIF is planning an online Lawyers for Libraries training—information will be sent to Council as soon as details are finalized and also can be found at www.ala.org/lawyers.

LeRoy C. Merritt Humanitarian Fund

Founded in 1970, the LeRoy C. Merritt Humanitarian Fund continues to provide financial assistance to librarians who have been harmed in their jobs due to discrimination for their defense of intellectual freedom.

The trustees of the Merritt Fund are planning a gala event to celebrate the 40th anniversary of the fund on Monday, June 28, 2010 during the ALA Annual Conference in Washington, DC. More details will be available and sent to Council in the coming months.

If you would like to help build the Merritt Fund into a greater resource, please consider donating online at www.merrittfund.org/donations, by phone at (800) 545-2433, ext. 4226, or by sending a check payable to LeRoy C. Merritt Humanitarian Fund to 50 E. Huron, Chicago, IL 60611.

ACTION

Intellectual Freedom Manual-Eighth Edition

The Office for Intellectual Freedom is working with ALA Editions toward publication of the eighth edition of the *Intellectual Freedom Manual*. Publication of this book is scheduled to coincide with the 2010 Annual Conference. In preparation for each new edition, the Intellectual Freedom Committee reviews all ALA intellectual freedom policies.

At its Spring Meeting, the Committee revised "Labels and Ratings Systems" and "Access to Electronic Information, Services, and Networks." The Committee also created two new Interpretations: "Minors and Internet Interactivity" and "Importance of Education to Intellectual Freedom." After thorough discussion of these policies, the Committee approved the documents as amended.

Proposed revisions to the Interpretations and the two new Interpretations were e-mailed on May 6, 2009, to the ALA Executive Board, Council, Divisions, Council committees, Round Tables, and Chapter Relations. The IFC considered comments received both prior to and during the 2009 Annual Conference and now is moving adoption of four policies:

1. "Access to Digital Information, Services, and Networks"; the IFC moves the adoption of its revisions to this policy;
2. "Importance of Education to Intellectual Freedom"; the IFC moves the adoption of this policy;
3. "Labeling and Rating Systems"; the IFC moves the adoption of its revisions to this policy;
4. "Minors and Internet Interactivity"; the IFC moves the adoption of this policy;

Resolution on the 2009 Reauthorization of the USA PATRIOT Act

The IFC worked with the Committee on Legislation regarding the reauthorization of the USA PATRIOT Act and related federal legislation including National Security Letters. We jointly agreed to focus on the USA PATRIOT Act due its imminent consideration by Congress.

Unfortunately, due to missed communications during our final concurrent committee meetings (in the Hyatt North and in McCormick Place), we were unable to combine the two versions of our joint resolution in time for Council III. Therefore, the IFC is submitting to Council a revised version with an alternate resolved clause that addresses our concern that the American Library Association affirm current ALA policy, reiterate its clear opposition to Section 215 and recommit itself to the principle of user privacy, and moves the adoption of CD #19.9

In closing, the Intellectual Freedom Committee thanks the Division and Chapter Intellectual Freedom Committees, the Intellectual Freedom Round Table, the unit and affiliate liaisons, and the OIF staff for their commitment, assistance, and hard work.

Access to Digital Information, Services, and Networks: An Interpretation of the Library Bill of Rights

Introduction

Freedom of expression is an inalienable human right and the foundation for self-government. Freedom of expression encompasses the freedom of speech and the corollary right to receive information.[1] Libraries and librarians protect and promote these rights regardless of the format or technology employed to create and disseminate information.

The American Library Association expresses the fundamental principles of librarianship in its Code of Ethics as well as in the Library Bill of Rights and its Interpretations. These principles guide librarians and library governing bodies in addressing issues of intellectual freedom that arise when the library provides access to digital information, services, and networks.

Libraries empower users by offering opportunities both for accessing the broadest range of information created by others and for creating and sharing information. Digital resources enhance the ability of libraries to fulfill this responsibility.

Libraries should regularly review issues arising from digital creation, distribution, retrieval, and archiving of information in the context of constitutional principles and ALA policies so that fundamental and traditional tenets of librarianship are upheld. Although digital information flows across boundaries and barriers despite attempts by individuals, governments, and private entities to channel or control it, many people lack access or capability to use or create digital information effectively.

In making decisions about how to offer access to digital information, services, and networks, each library should consider intellectual freedom principles in the context of its mission, goals, objectives, cooperative agreements, and the needs of the entire community it serves.

The Rights of Users

All library system and network policies, procedures, or regulations relating to digital information and services should be scrutinized for potential violation of user rights.

User policies should be developed according to the policies and guidelines established by the American Library Association, including "Guidelines for the Development and Implementation of Policies, Regulations, and Procedures Affecting Access to Library Materials, Services, and Facilities."

Users' access should not be restricted or denied for expressing, receiving, creating, or participating in constitutionally protected speech. If access is restricted or denied for behavioral or other reasons, users should be provided due process, including, but not limited to, formal notice and a means of appeal.

Information retrieved, utilized, or created digitally is constitutionally protected unless determined otherwise by a court of competent jurisdiction. These rights extend to minors as well as adults ("Free Access to Libraries for Minors"; "Access to Resources and Services in the School Library Media Program"; "Access for Children and Young Adults to Nonprint Materials"; and "Minors and Internet Interactivity").[2]

Libraries should use technology to enhance, not deny, digital access. Users have the right to be free of unreasonable limitations or conditions set by libraries, librarians, system administrators, vendors, network service providers, or others. Contracts, agreements, and licenses entered into by libraries on behalf of their users should not violate this right. Libraries should provide library users the training and assistance necessary to find, evaluate, and use information effectively.

Users have both the right of confidentiality and the right of privacy. The library should uphold these rights by policy, procedure, and practice in accordance with "Privacy: An Interpretation of the Library Bill of Rights," and "Importance of Education to Intellectual Freedom: An Interpretation of the Library Bill of Rights."

Equity of Access

The digital environment provides expanding opportunities for everyone to participate in the information society, but individuals may face serious barriers to access.

Digital information, services, and networks provided directly or indirectly by the library should be equally, readily, and equitably accessible to all library users. American Library Association policies oppose the charging of user fees for the provision of information services by libraries that receive support from public funds (50.3 "Free Access to Information"; 53.1.14 "Economic Barriers to Information Access"; 60.1.1 "Minority Concerns Policy Objectives"; 61.1 "Library Services for the Poor Policy Objectives"). All libraries should develop policies concerning access to digital information that are consistent with ALA's policies and guidelines, including "Economic Barriers to Information Access: An Interpretation of the Library Bill of Rights," "Guidelines for the Development and Implementation of Policies, Regulations and Procedures Affecting Access to Library Materials, Services and Facilities," and "Services to Persons with Disabilities: An Interpretation of the Library Bill of Rights."

Information Resources and Access

Libraries, acting within their mission and objectives, must support access to information on all subjects that serve the needs or interests of each user, regardless of the user's age or the content of the material. In order to preserve the cultural record and to prevent the loss of information, libraries may need to expand their selection or collection development policies to ensure preservation, in appropriate formats, of information obtained digitally. Libraries have an obligation to provide access to government information available in digital format.

Providing connections to global information, services, and networks is not the same as selecting and purchasing materials for a library collection. Libraries and librarians should not deny or limit access to digital information because of its allegedly controversial content or because of a librarian's personal beliefs or fear of confrontation. Furthermore, libraries and librarians should not deny access to digital information solely on the grounds that it is perceived to lack value. Parents and legal guardians who are concerned about their children's use of digital resources should provide guidance to their own children. Some information accessed digitally may not meet a library's selection or collection development policy. It is, therefore, left to each user to determine what is appropriate.

Publicly funded libraries have a legal obligation to provide access to constitutionally protected information. Federal, state, county, municipal, local, or library governing bodies sometimes require the use of Internet filters or other technological measures that block access to constitutionally protected information, contrary to the Library Bill of Rights (ALA Policy Manual, 53.1.17, Resolution on the Use of Filtering Software in Libraries). If a library uses a technological measure that blocks access to information, it should be set at the least restrictive level in order to minimize the blocking of constitutionally protected speech. Adults retain the right to access all constitutionally protected information and to ask for the technological measure to be disabled in a timely manner. Minors also retain the right to access constitutionally protected information and, at the minimum, have the right to ask the library or librarian to provide access to erroneously blocked information in a timely manner. Libraries and librarians have an obligation to inform users of these rights and to provide the means to exercise these rights.[3]

Digital resources provide unprecedented opportunities to expand the scope of information available to users. Libraries and librarians should provide access to information presenting all points of view. The provision of access does not imply sponsorship or endorsement. These principles pertain to digital resources as much as they do to the more traditional sources of information in libraries ("Diversity in Collection Development").

References

1. Martin v. Struthers, 319 U.S. 141 (1943); Lamont v. Postmaster General, 381 U.S. 301 (1965); Susan Nevelow Mart, The Right to Receive Information, 95 Law Library Journal 2 (2003).

2. Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969); Board of Education, Island Trees Union Free School District No. 26 v. Pico, 457 U.S. 853, (1982); American Amusement Machine Association v. Teri Kendrick, 244 F.3d 954 (7th Cir. 2001); cert.denied, 534 U.S. 994 (2001)

3. "If some libraries do not have the capacity to unblock specific Web sites or to disable the filter or if it is shown that an adult user's election to view constitutionally protected Internet material is burdened in some other substantial way, that would be the subject for an as-applied challenge, not the facial challenge made in this case." *United States, et al. v. American Library Association*, 539 U.S. 194 (2003) (Justice Kennedy, concurring).

See Also: "Questions and Answers on Access to Digital

Information, Services and Networks: An Interpretation of the Library Bill of Rights."

Adopted January 24, 1996; amended January 19, 2005 and July 15, 2009, by the ALA Council.

Importance of Education to Intellectual Freedom: An Interpretation of the Library Bill of Rights

Education in support of intellectual freedom is fundamental to the mission of libraries of all types. Intellectual freedom is a universal human right that involves both physical and intellectual access to information and ideas. Libraries provide physical access through facilities, resources, and services. Libraries foster intellectual access through educational programs and instruction in essential information skills.

Article I of the Library Bill of Rights "affirms that all libraries are forums for information and ideas." Physical access to information is listed as the first principle:

Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be excluded because of the origin, background, or views of those contributing to their creation.

Article II of the Library Bill of Rights emphasizes the importance of fostering intellectual access to information by providing materials that allow users to evaluate content and context and find information representing multiple points of view:

Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.

The universal freedom to express information and ideas is stated in the Universal Declaration of Human Rights, Article 19:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.

The importance of education to the development of intellectual freedom is expressed in the Universal Declaration of Human Rights, Article 26:

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages . . .

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial, or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Libraries of all types foster education by promoting the free expression and interchange of ideas. Libraries use resources, programming, and services to strengthen intellectual and physical access to information and thus build a foundation of intellectual freedom: collections (both real and virtual) are developed with multiple perspectives and individual needs of users in mind; programming and instructional services are framed around equitable access to information and ideas; and teaching of information skills is integrated appropriately throughout the spectrum of library programming and leads to empowered lifelong learners.

Through educational programming and instruction in information skills, libraries empower individuals to explore ideas, access and evaluate information, draw meaning from information presented in a variety of formats, develop valid conclusions, and express new ideas. Such education facilitates intellectual access to information and offers a path to intellectual freedom.

Adopted July 15, 2009, by the ALA Council.

Labeling and Rating Systems: An Interpretation of the Library Bill of Rights

Libraries do not advocate the ideas found in their collections or in resources accessible through the library. The presence of books and other resources in a library does not indicate endorsement of their contents by the library. Likewise, providing access to digital information does not indicate endorsement or approval of that information by the library. Labeling and rating systems present distinct challenges to these intellectual freedom principles.

Labels on library materials may be viewpoint-neutral directional aids designed to save the time of users, or they may be attempts to prejudice or discourage users or restrict their access to materials. When labeling is an attempt to prejudice attitudes, it is a censor's tool. The American Library Association opposes labeling as a means of predisposing people's attitudes toward library materials.

Prejudicial labels are designed to restrict access, based on a value judgment that the content, language, or themes of the material, or the background or views of the creator(s) of the material, render it inappropriate or offensive for all or certain groups of users. The prejudicial label is used to warn, discourage, or prohibit users or certain groups of users from accessing the material. Such labels sometimes are used to place materials in restricted locations where access depends on staff intervention.

Viewpoint-neutral directional aids facilitate access by making it easier for users to locate materials. The materials are housed on open shelves and are equally accessible to all users, who may choose to consult or ignore the directional aids at their own discretion.

Directional aids can have the effect of prejudicial labels when their implementation becomes proscriptive rather than descriptive. When directional aids are used to forbid access or to suggest moral or doctrinal endorsement, the effect is the same as prejudicial labeling.

Many organizations use rating systems as a means of advising either their members or the general public regarding the organizations' opinions of the contents and suitability or appropriate age for use of certain books, films, recordings, Web sites, games, or other materials. The adoption, enforcement, or endorsement of any of these rating systems by a library violates the Library Bill of Rights. When requested, librarians should provide information about rating systems equitably, regardless of viewpoint.

Adopting such systems into law or library policy may be unconstitutional. If labeling or rating systems are mandated by law, the library should seek legal advice regarding the law's applicability to library operations.

Libraries sometimes acquire resources that include ratings as part of their packaging. Librarians should not endorse the inclusion of such rating systems; however, removing or destroying the ratings-if placed there by, or with permission of, the copyright holder-could constitute expurgation (see "Expurgation of Library Materials: An Interpretation of the Library Bill of Rights"). In addition, the inclusion of ratings on bibliographic records in library catalogs is a violation of the Library Bill of Rights.

Prejudicial labeling and ratings presuppose the existence of individuals or groups with wisdom to determine by authority what is appropriate or inappropriate for others. They presuppose that individuals must be directed in making up their minds about the ideas they examine. The American Library Association affirms the rights of individuals to form their own opinions about resources they choose to read or view.

Adopted July 13, 1951, by the ALA Council; amended June 25, 1971; July 1, 1981; June 26, 1990; January 19, 2005 and July 15, 2009.

Minors and Internet Interactivity: An Interpretation of the Library Bill of Rights

The digital environment offers opportunities for accessing, creating, and sharing information. The rights of minors to retrieve, interact with, and create information posted on the Internet in schools and libraries are extensions of their First Amendment rights. (See also other interpretations of the Library Bill of Rights, including "Access to Digital Information, Services, and Networks," "Free Access to Libraries for Minors," and "Access for Children and Young Adults to Nonprint Materials.")

Academic pursuits of minors can be strengthened with the use of interactive Web tools, allowing young people to create documents and share them online; upload pictures, videos, and graphic material; revise public documents; and add tags to online content to classify and organize information. Instances of inappropriate use of such academic tools should be addressed as individual behavior issues, not as justification for restricting or banning access to interactive technology. Schools and libraries should ensure that institutional environments offer opportunities for students to use interactive Web tools constructively in their academic pursuits, as the benefits of shared learning are well documented.

Personal interactions of minors can be enhanced by social tools available through the Internet. Social networking Web sites allow the creation of online communities that feature an open exchange of information in various forms, such as images, videos, blog posts, and discussions about common interests. Interactive Web tools help children and young adults learn about and organize social, civic, and extra-curricular activities. Many interactive sites invite users to establish online identities, share personal information, create Web content, and join social networks. Parents and guardians play a critical role in preparing their children for participation in online activity by communicating their personal family values and by monitoring their children's use of the Internet. Parents and guardians are responsible for what their children-and only their children-access on the Internet in libraries.

The use of interactive Web tools poses two competing intellectual freedom issues-the protection of minors' privacy and the right of free speech. Some have expressed concerns regarding what they perceive is an increased vulnerability of young people in the online environment when they use interactive sites to post personally identifiable information. In an effort to protect minors' privacy, adults sometimes restrict access to interactive Web environments. Filters, for example, are sometimes used to restrict access by youth to interactive social networking tools, but at the same time deny minors' rights to free expression on the Internet. Prohibiting children and young adults from using social networking sites does not teach safe behavior and leaves youth without the necessary knowledge and skills to protect their privacy or engage in responsible speech. Instead of restricting or denying access to the Internet, librarians and teachers should educate minors to participate responsibly, ethically, and safely.

The First Amendment applies to speech created by minors on interactive sites. Usage of these social networking sites in a school or library allows minors to access and create resources that fulfill their interests and needs for information, for social connection with peers, and

for participation in a community of learners. Restricting expression and access to interactive Web sites because the sites provide tools for sharing information with others violates the tenets of the Library Bill of Rights. It is the responsibility of librarians and educators to monitor threats to the intellectual freedom of minors and to advocate for extending access to interactive applications on the Internet.

As defenders of intellectual freedom and the First Amendment, libraries and librarians have a responsibility to offer unrestricted access to Internet interactivity in accordance with local, state, and federal laws and to advocate for greater access where it is abridged. School and library professionals should work closely with young people to help them learn skills and attitudes that will prepare them to be responsible, effective, and productive communicators in a free society.

Adopted July 15, 2009, by the ALA Council.

Resolution on the Reauthorization of Section 215 of the USA PATRIOT Act

WHEREAS, freedom of thought is the most basic of all freedoms and is inextricably linked to the free and open exchange of knowledge and information; and these freedoms can be preserved only in a society in which privacy rights are rigorously protected; and

WHEREAS, the American Library Association (ALA) is committed to preserving the free and open exchange of knowledge and information and the privacy rights of all-library users, library employees, and the general public; and

WHEREAS, ALA opposes any use of governmental power to suppress the free and open exchange of knowledge and information; and

WHEREAS, the USA PATRIOT ACT includes provisions such as Section 215 that threaten the free and open exchange of knowledge and information; and

WHEREAS, three sections of the USA PATRIOT Act, including Section 215, are scheduled to sunset on December 31, 2009; and

WHEREAS, Section 215 of the USA PATRIOT Act allows the government to request and obtain library records secretly for large numbers of individuals without any reason to believe they are involved in illegal activity; and

WHEREAS, orders issued under Section 215 automatically impose a nondisclosure or gag order on the recipients, thereby prohibiting the reporting of abuse of government authority and abrogating the recipients' First Amendment rights; and

WHEREAS, the Foreign Intelligence Surveillance Act (FISA) Court has issued more than 220 Section 215 orders between 2005 and 2007, some of which may have been issued to libraries; and

WHEREAS, the Department of Justice Office of the Inspector General reported that the "FISA Court twice refused Section 215 orders based on concerns that the investigation was premised on protected First Amendment activity"; now, therefore be it

RESOLVED:

1) that the American Library Association urges Congress to allow section 215 of the USA PATRIOT ACT to sunset.
2) that the American Library Association communicate this resolution to the U.S. Congress, the President of the United States and others as appropriate. ☐

(FTRF . . . from page 150)

interest. Such a balancing test would allow the abridgment of First Amendment rights with respect to broad categories of speech found to have "low value" and could easily encompass many forms of expression, including real or virtual depictions of violence against persons or property. The case, *U.S. v. Stevens*, is being characterized as the most important First Amendment litigation since the CDA challenge.

At issue is a federal statute that prohibits the creation, sale or possession of "a depiction of animal cruelty" with "the intention of placing that depiction in interstate or foreign commerce for commercial gain," if the act depicted is illegal where the depiction is created, sold or possessed. The law provides an exception for depictions having "serious" value. It should be noted that the underlying acts of animal cruelty ostensibly targeted by the statute are already illegal in all 50 states and the District of Columbia.

Robert J. Stevens, a dog-trainer, pit bull aficionado and resident of Virginia was indicted under the statute by a federal grand jury in Pennsylvania, and was convicted and sentenced to 37 months in prison for selling videos containing footage of pit bulls fighting and attacking other animals. Stevens did not create the footage; some of it was old footage; other footage came from Japan where dog fighting is legal. The videos are sold online through Barnes & Noble and Amazon. The district court refused to dismiss his indictment on First Amendment grounds, finding it justified by a compelling government interest.

Stevens' conviction was overturned by the U.S. Court of Appeals for the Third Circuit, which held the statute unconstitutional. The appellate court, in a 10–3 en banc ruling, rejected the government's argument that depictions of animal cruelty should be excluded from First Amendment protection, as are depictions of obscenity and child pornography, and held there to be no compelling government interest in banning speech to compensate for under-enforcement of existing animal cruelty laws. It further ruled that the

"serious value" exception did not render the law constitutional.

The government appealed the Third Circuit ruling to the Supreme Court, not only asking the Court to carve out an exception to the First Amendment—something it has not done since 1982 in *New York v. Ferber*—but also asking the Court to restrict the ability to bring facial challenges for overbreadth, severely limiting the ability to challenge a statute because of its "chilling effect" on protected speech.

The Supreme Court has granted certiorari. FTRF is filing an *amicus curiae* brief that will ask the Court to uphold the Third Circuit ruling. The brief will argue that there is no basis for removing depictions of harm to animals as a class of speech from First Amendment protection, and that strict scrutiny must be applied to the law, as was done by the Third Circuit Court of Appeals. Presently, the Association of American Publishers and the American Booksellers Foundation for Free Expression will be joining FTRF on the amicus curiae brief.

ONGOING LITIGATION

The Foundation continues to monitor and to participate in lawsuits that address First Amendment rights in the library. Three lawsuits are especially important to libraries and the community of library users and readers.

One is *American Civil Liberties Union of Florida v. Miami-Dade School Board*, the lawsuit challenging the Miami-Dade School Board's decision to remove from its classrooms and libraries all copies of the book Vamos a Cuba and its English-language companion book, *A Visit to Cuba*, asserting that this picture book aimed at four- to six-year-olds fails to accurately convey the harsh political realities of life in Cuba. A federal district court judge in Miami held that the removal decision was unconstitutional, finding that the claimed inaccuracies were a pretext for imposing "political orthodoxy."

On February 5, 2009, the Eleventh Circuit overturned that decision, holding 2–1 that the school board's decision did not violate the First Amendment. It ruled that the district court erred in finding that the book had been removed for political reasons, and that book's factual inaccuracies justified the book's removal from Miami-Dade school libraries. The ACLU of Miami has appealed this decision to the U.S. Supreme Court, and is waiting to learn if the Supreme Court will hear the appeal. FTRF has filed *amicus curiae* briefs in the case, and anticipates supporting the ACLU should the Supreme Court grant review.

The second lawsuit is *Sarah Bradburn et al. v. North Central Regional Library District*. The lawsuit, filed by library users and the ACLU, challenges a library's policy of refusing to honor adults' requests to temporarily disable Internet filters for research and reading. The lawsuit is presently pending before the Washington State Supreme Court, which is considering several questions of state law certified to that court by the federal district court. On June 23, 2009, the Washington Supreme Court heard oral arguments on the question of whether the library's filtering policy violates the state constitution. Once the Washington State Supreme Court concludes its deliberations, the case will return to the federal courts. FTRF is not a participant in this lawsuit.

A third lawsuit, *Faith Center Church Evangelistic Ministries v. Glover*, also captured the attention of librarians across the country when the Ninth Circuit Court of Appeals upheld the meeting room policy of the Contra Costa County (California) Library, which barred religious groups from holding worship services in its meeting rooms. It ruled that the library's policy was reasonable in light of the library's desire to manage the use of the library's limited public forum.

Subsequently, the Supreme Court denied plaintiff Faith Center's petition for certiorari. The lawsuit was remanded to the district court to determine the extent to which Faith Center could use the library's meeting rooms, and to resolve the question of whether the library's policy violated the Establishment Clause of the First Amendment. On June 19, 2009, the district court held that the policy did violate the Establishment Clause because enforcement of the policy required library staff to inquire into religious doctrine in order to determine if a religious group's proposed activity qualified as religious worship. Contra Costa county will now need to decide whether to appeal the new decision to the Ninth Circuit Court of Appeals. FTRF is not a participant in this lawsuit.

FTRF also continues its participation in lawsuits aimed at protecting and vindicating basic First Amendment free speech rights. Among these is *Video Software Dealers Assn. et al. v. Schwarzenegger*, a lawsuit challenging a California law that restricts the sale or rental of video games classified by the state as "violent video games" to those under the age of 18. In August 2007, the district court granted a permanent injunction in favor of the plaintiffs, on the grounds that the statute violated the First Amendment. The State of California appealed that decision to the Ninth Circuit Court of Appeals, and on February 20, 2009, that court upheld the decision on First Amendment grounds. On May 20, 2009, the state filed a petition for certiorari with the U.S. Supreme Court, seeking review of the Ninth Circuit's decision. If the Supreme Court accepts review, the lawsuit would, for the first time, place before the Court the question of whether depictions of violence in video games are protected by the First Amendment. FTRF is an amicus curiae in this case, filing briefs in support of the plaintiffs.

2009 ROLL OF HONOR RECIPIENT ROBERT P. DOYLE

It is my privilege to inform you that Robert P. Doyle, executive director of the Illinois Library Association (ILA), is the recipient of the 2009 Freedom to Read Foundation

Roll of Honor Award.

Bob's reputation as a fierce advocate for intellectual freedom is known throughout the library world. He has successfully shepherded ILA through quite a few legislative attempts to restrict intellectual freedom, and under his leadership, ILA has trained countless librarians on their rights and responsibilities under the First Amendment. In addition to his position at ILA, Doyle serves as editor of the *Banned Books Resource* Guide, a listing of thousands of books that have been subject to censorship challenges. Prior to joining ILA, Doyle served as director of ALA's International Relations Office and before that as deputy director of the ALA Office for Intellectual Freedom, under Judith Krug's leadership.

Doyle was recently reelected to a second term on the FTRF Board of Directors in April's trustee election and did an outstanding job as co-chair of the FTRF 40th Anniversary Celebration Committee. We are very proud to include Bob Doyle on the FTRF Roll of Honor.

CONABLE SCHOLARSHIP

I am also pleased to announce the winner of the 2009 Gordon M. Conable Conference Scholarship, Amanda Sharpe. Ms. Sharpe is a graduate student in the University of California at Los Angeles' Department of Information Studies and holds a B.A. in History from the University of California at Santa Barbara. She spent several years as an elementary school teacher before starting her library science studies at UCLA last fall.

She has extensive volunteer experience with Spanish-speaking and incarcerated youth in California. In fact, in addition to her responsibilities as the Conable Scholarship recipient, she used this conference as an opportunity to launch her new website, www.chil-es.org, which deals with issues of providing library services to Spanish-speaking youth.

The Conable Scholarship made it possible for Ms. Sharpe to attend the 2009 Annual Conference in Chicago by providing funds for her conference registration, transportation, accommodations, and expenses. She attended various FTRF meetings and other intellectual freedom meetings and programs at the conference and had the opportunity to consult with an FTRF board member who served as her mentor at conference. Following conference, Sharpe will prepare and present a report about her experiences.

DIVERSITY INITIATIVE

On the subject of diversity, at the suggestion of Jim Neal the Board has appointed a task force to study the question of diversity with respect to intellectual freedom initiatives. Barbara Jones will chair the task force which includes Martin Garnar, Pam Klipsch and Camila Alire as members. They will report back to the Board at Midwinter.

FTRF MEMBERSHIP

Starting next month, the Freedom to Read Foundation will offer free one-year memberships to graduating library school students. This is a trial program to encourage new entrants to the profession to understand and participate in the crucial work of the Foundation. Membership in the Freedom to Read Foundation provides a great opportunity to support the important work of defending First Amendment freedoms, both in the library and in the larger world. Your support for intellectual freedom is amplified when you join with FTRF's members to advocate for free expression and the freedom to read. I strongly encourage all ALA Councilors to join me in becoming a personal member of the Freedom to Read Foundation, and to have your libraries and other institutions become organizational members. Please send a check ($35+ for personal members, $100+ for organizations, $10+ for students) to:

Freedom to Read Foundation
50 E. Huron Street
Chicago, IL 60611

Alternatively, you can join or renew your membership by calling (800) 545-2433, ext. 4226, or online at www.ftrf.org. □

(from the bench . . . from page 160)

Faculty members and administrators testified for both sides, some arguing that Churchill was a critical voice on campus and others saying that his return would set a terrible precedent. After the initial controversy surrounding Churchill, faculty members leaped to defend his right to free speech, but that support eroded after the accusations of research misconduct.

Naves started his ruling with an analysis that led him to throw out the jury's findings. He noted that the university had preserved a defense of legal immunity when it argued the rest of the case, because that issue is decided by a judge not a jury. He then reviewed why he viewed the Board of Regents as immune in the case, as a "quasi-judicial body." Churchill maintained that the entire process of reviewing the allegations against him was tainted, including the final review by the Board of Regents. But Naves said that the procedures in place—multiple layers of review, the chance for Churchill to question witnesses, introduce evidence, receive guidance from a lawyer, and so forth—both provided for a reasonable process and gave the regents protection from being sued.

Then Naves turned to the issue of whether Churchill should get his job back. Naves stressed the importance of colleges and universities making their own determinations

on academic matters, including research misconduct. He said that faculty committees, not courts, should "define the standards of academic misconduct."

Naves said: "I conclude that reinstating Professor Churchill would entangle the judiciary excessively in matters that are more appropriate for academic professionals."

While leaders of the Ethnic Studies program backed Churchill's return, Naves said that their program would be damaged with Churchill back on the faculty. "The evidence was credible that Professor Churchill will not only be the most visible member of the Department of Ethnic Studies if reinstated, but that reinstatement will create the perception in the broader academic community that the Department of Ethnic Studies tolerates research misconduct. The evidence was also credible that this perception will make it more difficult for the Department of Ethnic Studies to attract and retain new faculty members. In addition, this negative perception has great potential to hinder students graduating from the Department of Ethnic Studies in their efforts to obtain placement in graduate programs," Naves wrote.

More broadly, Naves said that "I also fully understand" the concerns expressed by other faculty members that Churchill's presence on the faculty would make it difficult to hold students to "high standards of honesty in research and writing."

Finally, Naves rejected the idea that Churchill deserved compensation for being dismissed as he was. Naves wrote: "Professor Churchill's own statements during the trial established that he has not seriously pursued any efforts to gain comparable employment, but has instead chosen to give lectures and other presentations as a means of supplementing his income. Reportedly, he even 'received a few job offers' that he declined to pursue." Noting that Churchill has continued to give lectures and publish, Naves questioned whether Churchill has been harmed by what happened.

Scott Robinson, a Denver trial lawyer and analyst who has followed the trial, said he was not surprised at the ruling, given that courts have shied from interfering with university decisions. By the same token, Robinson said, it was difficult to equate regents with judges, as Judge Naves had, particularly when in this case the regents publicly denounced Churchill at the outset of the controversy.

Cary Nelson, national president of the American Association of University Professors, said that "there are so many problems with the judge's decision that it would require a full essay to respond to them."

To cite one example, he noted that Naves noted critical statements Churchill made about the university administration to argue that relations between Churchill and the university were so bad that he couldn't return to the faculty. "That shows remarkable ignorance about what faculty members conventionally say about administrators and their impact," Nelson said.

Ultimately, Nelson said, the jury recognized "that the university president's decision to fire Churchill was fruit of the poisoned tree—the public outrage over Churchill's extramural speech. But it was the judge's responsibility to honor the jury's decision by reinstating him." Reported in: New York Times, July 8; insidehighered.com, July 8.

publishing

New York, New York

In a victory for the reclusive writer J. D. Salinger, a federal judge on July 1 indefinitely banned publication in the United States of a new book by a Swedish author that contains a 76-year-old version of Holden Caulfield, the protagonist of Salinger's *The Catcher in the Rye*.

The judge, Deborah A. Batts, of United States District Court in Manhattan, had granted a ten-day temporary restraining order in June against the author, Fredrik Colting, who wrote the new novel under the pen name J. D. California.

In a 37-page ruling, Judge Batts issued a preliminary injunction—indefinitely banning the publication, advertising, or distribution of the book in this country—after considering the merits of the case. The book has been published in Britain.

"I am pretty blown away by the judge's decision," Colting said in an e-mail message after the ruling. "Call me an ignorant Swede, but the last thing I thought possible in the U.S. was that you banned books." Colting and his lawyer, Edward H. Rosenthal, said they would appeal. The decision means that "members of the public are deprived of the chance to read the book and decide for themselves whether it adds to their understanding of Salinger and his work," Rosenthal said.

Marcia B. Paul, a lawyer for Salinger, declined to comment on the decision. Reported in: New York Times, July 1. □

(is it legal? . . . from page 168)

prior restraint and an unwarranted extension" of copyright protection.

"Without a shred of evidence of harm to the Plaintiff, the District Court has taken the extraordinary step of enjoining the publication of the book," court documents read. "But [the book] is a complex and undeniably transformative comment on one of our nation's most famous authors, J.D. Salinger, his best known creation, Holden Caulfield, and his most celebrated work, The Catcher in the Rye."

The appeal offers six arguments for the injunction to be vacated: that the injunction is an impermissible prior restraint; that it wrongly presumes "irreparable harm," without any evidence of actual harm; that it extends copyright protection

to character Holden Caulfield even though Colting's book is "not substantially similar" to any copyrightable elements in Salinger's work; by finding that Colting's book does not comment upon or criticize Salinger sufficiently to constitute fair use; by incorrectly rejecting Colting's fair use defense based on the lack of evidence of harm to Salinger's potential market or its authorized derivatives; and the District Court's "failure to require Plaintiff to post a bond." A finding for the defendants on any one of the six arguments could serve as the basis for reversing the injunction.

On July 1, District Court judge Deborah Batts ruled that author Salinger was "likely to succeed on the merits of [his] copyright case," and issued a preliminary injunction barring the publication of what Salinger's attorneys called an unauthorized sequel to *The Catcher in the Rye*. In her decision, Batts ruled that Colting's *60 Years Later* would harm the market for "sequels and other derivative works" from Salinger. "While the court does find some limited transformative character in 60 Years Later," her order read, Batts concluded that "the alleged parodic content is not reasonably perceivable, and the limited non-parodic transformative content is unlikely to overcome the obvious commercial nature of the work."

After the ruling, Aaron Silverman, president of distributor SCB, also named in the suit, said that he hoped the case would move quickly through the appeal process. "We're hopeful that the hearing will be in late July or early August," Silverman noted, "and have an answer by early September at the latest."

Indeed, the appeal seeks "urgent relief," with attorneys arguing that the injunction causes harm to the defendants. "If *60 Years Later* cannot be published in the U.S., Colting's reputation as an author will be tarnished and SCB's failure to deliver the book will harm its reputation with its customers," the appeal reads. "Substantial time and money Defendants invested in the marketing and promotion… and advertising, will be lost. The timing of the publication in the U.S. was set to take advantage of the publicity surrounding the book's publication in London this Spring, and the injunction is causing an irretrievable loss of the momentum." By contrast, "the record is completely devoid of any evidence that Salinger has suffered or will suffer any harm as a result of the publication." Reported in: Publishers Weekly, July 24.

privacy

Washington, D.C.

The National Security Agency is facing renewed scrutiny over the extent of its domestic surveillance program, with critics in Congress saying its recent intercepts of the private telephone calls and e-mail messages of Americans are broader than previously acknowledged, current and former officials said.

The agency's monitoring of domestic e-mail messages, in particular, has posed longstanding legal and logistical difficulties, the officials said.

Since April, when it was disclosed that the intercepts of some private communications of Americans went beyond legal limits in late 2008 and early 2009, several Congressional committees have been investigating. Those inquiries have led to concerns in Congress about the agency's ability to collect and read domestic e-mail messages of Americans on a widespread basis, officials said. Supporting that conclusion is the account of a former N.S.A. analyst who, in a series of interviews, described being trained in 2005 for a program in which the agency routinely examined large volumes of Americans' e-mail messages without court warrants. Two intelligence officials confirmed that the program was still in operation.

Both the former analyst's account and the rising concern among some members of Congress about the N.S.A.'s recent operation are raising fresh questions about the spy agency.

Representative Rush Holt, Democrat of New Jersey and chairman of the House Select Intelligence Oversight Panel, has been investigating the incidents and said he had become increasingly troubled by the agency's handling of domestic communications. In an interview, Holt disputed assertions by Justice Department and national security officials that the over-collection was inadvertent.

"Some actions are so flagrant that they can't be accidental," Holt said. Holt added that few lawmakers could challenge the agency's statements because so few understood the technical complexities of its surveillance operations. "The people making the policy," he said, "don't understand the technicalities."

The inquiries and analyst's account underscore how e-mail messages, more so than telephone calls, have proved to be a particularly vexing problem for the agency because of technological difficulties in distinguishing between e-mail messages by foreigners and by Americans. A new law enacted by Congress last year gave the N.S.A. greater legal leeway to collect the private communications of Americans so long as it was done only as the incidental byproduct of investigating individuals "reasonably believed" to be overseas.

But after closed-door hearings by three Congressional panels, some lawmakers are asking what the tolerable limits are for such incidental collection and whether the privacy of Americans is being adequately protected.

"For the Hill, the issue is a sense of scale, about how much domestic e-mail collection is acceptable," a former intelligence official said, speaking on condition of anonymity because N.S.A. operations are classified. "It's a question of how many mistakes they can allow."

While the extent of Congressional concerns about the N.S.A. has not been shared publicly, such concerns are among national security issues that the Obama administration

has inherited from the Bush administration, including the use of brutal interrogation tactics, the fate of the prison at Guantánamo Bay, Cuba, and whether to block the release of photographs and documents that show abuse of detainees.

In each case, the administration has had to navigate the politics of continuing an aggressive intelligence operation while placating supporters who want an end to what they see as flagrant abuses of the Bush era.

Wendy Morigi, a spokeswoman for Dennis C. Blair, the national intelligence director, said that because of the complex nature of surveillance and the need to adhere to the rules of the Foreign Intelligence Surveillance Court, the secret panel that oversees surveillance operation, and "other relevant laws and procedures, technical or inadvertent errors can occur."

"When such errors are identified," Morigi said, "they are reported to the appropriate officials, and corrective measures are taken."

In April, the Obama administration said it had taken comprehensive steps to bring the security agency into compliance with the law after a periodic review turned up problems with "over-collection" of domestic communications. The Justice Department also said it had installed new safeguards.

Under the surveillance program, before the N.S.A. can target and monitor the e-mail messages or telephone calls of Americans suspected of having links to international terrorism, it must get permission from the Foreign Intelligence Surveillance Court. Supporters of the agency say that in using computers to sweep up millions of electronic messages, it is unavoidable that some innocent discussions of Americans will be examined. Intelligence operators are supposed to filter those out, but critics say the agency is not rigorous enough in doing so.

The N.S.A. is believed to have gone beyond legal boundaries designed to protect Americans in about 8 to 10 separate court orders issued by the Foreign Intelligence Surveillance Court, according to three intelligence officials who spoke anonymously because disclosing such information is illegal. Because each court order could single out hundreds or even thousands of phone numbers or e-mail addresses, the number of individual communications that were improperly collected could number in the millions, officials said. (It is not clear what portion of total court orders or communications that would represent.)

"Say you get an order to monitor a block of 1,000 e-mail addresses at a big corporation, and instead of just monitoring those, the N.S.A. also monitors another block of 1,000 e-mail addresses at that corporation," one senior intelligence official said. "That is the kind of problem they had."

Over-collection on that scale could lead to a significant number of privacy invasions of American citizens, officials acknowledge, setting off the concerns among lawmakers and on the secret FISA court.

"The court was not happy" when it learned of the over-collection, said an administration official involved in the matter.

Defenders of the agency say it faces daunting obstacles in trying to avoid the improper gathering or reading of Americans' e-mail as part of counterterrorism efforts aimed at foreigners. Several former intelligence officials said that e-mail traffic from all over the world often flows through Internet service providers based in the United States. And when the N.S.A. monitors a foreign e-mail address, it has no idea when the person using that address will send messages to someone inside the United States, the officials said.

The difficulty of distinguishing between e-mail messages involving foreigners from those involving Americans was "one of the main things that drove" the Bush administration to push for a more flexible law in 2008, said Kenneth L. Wainstein, the homeland security adviser under President George W. Bush. That measure, which also resolved the long controversy over N.S.A.'s program of wiretapping without warrants by offering immunity to telecommunications companies, tacitly acknowledged that some amount of Americans' e-mail would inevitably be captured by the N.S.A.

But even before that, the agency appears to have tolerated significant collection and examination of domestic e-mail messages without warrants, according to the former analyst, who spoke only on condition of anonymity.

He said he and other analysts were trained to use a secret database, code-named Pinwale, that archived foreign and domestic e-mail messages. He said Pinwale allowed N.S.A. analysts to read large volumes of e-mail messages to and from Americans as long as they fell within certain limits—no more than 30 percent of any database search, he recalled being told—and Americans were not explicitly singled out in the searches.

The former analyst added that his instructors had warned against committing any abuses, telling his class that another analyst had been investigated because he had improperly accessed the personal e-mail of former President Bill Clinton.

The recent concerns about N.S.A.'s domestic e-mail collection follow years of unresolved legal and operational concerns within the government over the issue. Current and former officials now say that the tracing of vast amounts of American e-mail traffic was at the heart of a crisis in 2004 at the hospital bedside of John Ashcroft, then the attorney general, as top Justice Department aides staged a near revolt over what they viewed as possibly illegal aspects of the N.S.A.'s surveillance operations.

James Comey, then the deputy attorney general, and his aides were concerned about the collection of "meta-data" of American e-mail messages, which show broad patterns of e-mail traffic by identifying who is e-mailing whom, current and former officials say. Lawyers at the Justice Department believed that the tracing of e-mail messages appeared to violate federal law.

"The controversy was mostly about that issue," said a former administration official involved in the dispute. Reported in: New York Times, June 17.

Washington, D.C.

The American Civil Liberties Union is attempting to discover the degree to which Constitutional protections are being violated by a US government policy allowing border officials to search the laptops and other electronic devices of travelers even in the absence of any reason for suspicion.

Last July, Customs and Border Protection—which is part of the Department of Homeland Security—issued a policy allowing it to conduct suspicionless border searches of "documents, books, pamphlets, and other printed material, as well as computers, disks, hard drives, and other electronic or digital storage devices."

The announced purpose of the searches was to counter such crimes as terrorism, drug smuggling, child pornography, and copyright violations.

The ACLU has now filed a Freedom of Information Act request to discover what impact that policy has had on travelers. According to ACLU staff attorney Larry Schwartztol, "Based on current CBP policy, we have reason to believe innumerable international travelers—including U.S. citizens—have their most personal information searched by government officials and retained by the government indefinitely."

The ACLU is seeking information about the extent to which documents and electronic devices have been retained and possibly disseminated to other government agencies or outside entities, as well as on any complaints about the policy filed by affected individuals.

It is also particularly interested in discovering the criteria by which travelers are chosen for these searches because of its concern that "granting CBP agents unbridled discretion to conduct suspicionless searches also raises a serious risk of discriminatory enforcement against racial and religious minorities."

When the policy was first announced in 2008, Senator Russ Feingold described it as "truly alarming." The Canadian Bar Association even warned that the "new U.S. border security policy poses a potential threat to solicitor-client privilege," and went so far as to recommend that lawyers cross the border with a "forensically clean" laptop and download necessary data at their destination through a secure private network.

According to ACLU attorney Catherine Crump, the CBP policy potentially violates both Fourth Amendment guarantees against unreasonable search and seizure and First Amendment rights of freedom of speech and association.

"These highly intrusive government searches into a traveler's most private information, without any reasonable suspicion, are a threat to the most basic privacy rights guaranteed in the Constitution," states Crump. "Searching or retaining a traveler's personal information—especially the vast stores of information contained in a laptop or other electronic storage device—could also have a chilling effect on the free exchange of ideas and beliefs." Reported in: rawstory.com, June 10. □

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