

newsletter
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FTRF, ALA join efforts to protect privacy and increase transparency around surveillance

The Freedom to Read Foundation and American Library Association have joined with dozens of technology firms and other civil liberty organizations in calling on the Obama Administration and Congress to increase transparency surrounding government surveillance efforts.

In a letter released July 18, FTRF, ALA, and the other groups led by the Center for Democracy and Technology demanded that technology companies be permitted to release information about the number of requests for information under the USA PATRIOT Act and other authorities, as well as that the government itself release its own data on surveillance.

From the letter:

“As an initial step, we request that the Department of Justice, on behalf of the relevant executive branch agencies, agree that Internet, telephone, and web-based service providers may publish specific numbers regarding government requests authorized under specific national security authorities, including the Foreign Intelligence Surveillance Act (FISA) and the NSL statutes. We further urge Congress to pass legislation requiring comprehensive transparency reporting by the federal government and clearly allowing for transparency reporting by companies without requiring companies to first seek permission from the government or the FISA Court.”

The letter includes an appeal to the country’s innovative tradition:

“Just as the United States has long been an innovator when it comes to the Internet and products and services that rely upon the Internet, so too should it be an innovator when it comes to creating mechanisms to ensure that government is transparent, accountable, and respectful of civil liberties and human rights.”

ALA also joined July 18 with its partners in the Campaign for Reader Privacy to call on Congress to pass legislation to restore privacy protections for bookstore and library

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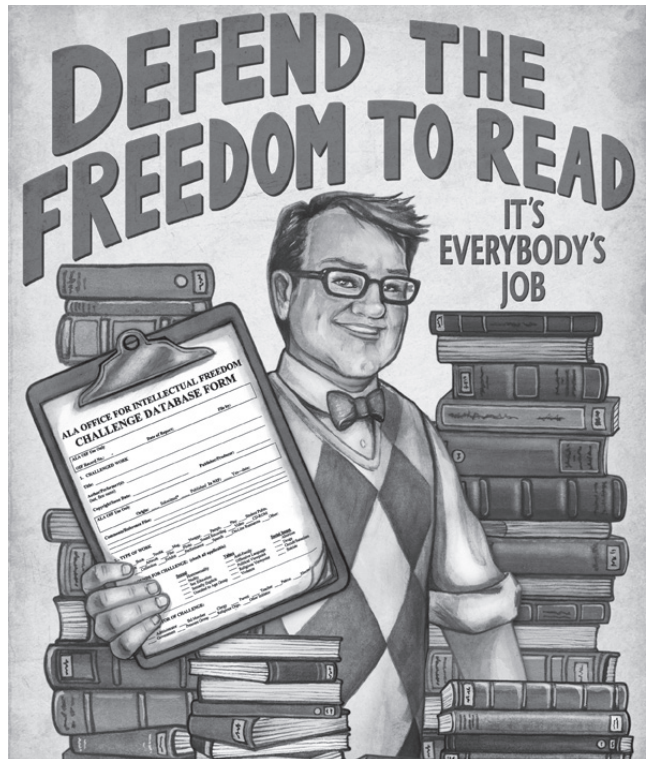
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NSA collected U.S. email records in bulk for more than two years under Obama

The Obama administration for more than two years permitted the National Security Agency (NSA) to continue collecting vast amounts of records detailing the email and Internet usage of Americans, according to secret documents obtained by the *Guardian* newspaper.

The documents indicate that under the program, launched in 2001, a federal judge sitting on the secret surveillance panel called the FISA court would approve a bulk collection order for Internet metadata “every 90 days.” A senior administration official confirmed the program, stating that it ended in 2011.

The collection of these records began under the Bush administration’s wide-ranging warrantless surveillance program, collectively known by the NSA codename Stellar Wind.

According to a top-secret draft report by the NSA’s inspector general – published for the first time by the *Guardian* – the agency began “collection of bulk Internet metadata” involving “communications with at least one communicant outside the United States or for which no communicant was known to be a citizen of the United States.”

Eventually, the NSA gained authority to “analyze communications metadata associated with United States persons and persons believed to be in the United States,” according to a 2007 Justice Department memo, which is marked secret.

The *Guardian* previously revealed that the NSA was collecting the call records of millions of US Verizon customers under a FISA court order that, it later emerged, is renewed every 90 days. Similar orders are in place for other phone carriers.

The Internet metadata of the sort NSA collected for at least a decade details the accounts to which Americans sent emails and from which they received emails. It also details the Internet protocol addresses (IP) used by people inside the United States when sending emails – information which can reflect their physical location. It did not include the content of emails.

“The Internet metadata collection program authorized by the FISA court was discontinued in 2011 for operational and resource reasons and has not been restarted,” Shawn Turner, the Obama administration’s director of communications for national intelligence, said.

“The program was discontinued by the executive branch as the result of an interagency review,” Turner continued. He would not elaborate further. But while that specific program has ended, additional secret NSA documents show that some collection of Americans’ online records continues. In December 2012, for example, the NSA launched one new program allowing it to analyze communications

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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 at the ALA Annual Meeting in Chicago on July 2 by IFC Chair Pat Scales.

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

INFORMATION

Intellectual Freedom Manual Ninth Edition

Planning is underway to update the Intellectual Freedom Manual. The ninth edition is scheduled to be published in 2015. In preparation of the new edition, OIF and IFC will undertake a thorough review of all the Interpretations of the Library Bill of Rights so that they reflect current library practices and affirm equal and equitable access for all library users. We are pleased to announce that Trina Magi, Library Associate Professor from University of Vermont, will be this edition’s editor.

Online Learning

To help achieve its goal of educating librarians and the general public about the nature and importance of intellectual freedom in libraries, OIF has delivered a variety of free educational webinars thus far in 2013.

On March 19, OIF offered its third online learning event focused on self-service holds and reader privacy. Last year, ALA Council passed a resolution addressing self-service hold practices that encourages both libraries and vendors to adopt systems that preserve users’ confidentiality. OIF’s webinars explain the legal and ethical standards that support the move to privacy-protective hold systems and discuss various self-service hold systems that both protect user privacy and save money for libraries. OIF had 67 people register for the March 19 webinar and the recording of this event has been viewed 117 times. The archived recording may be viewed by visiting <http://ala.adobeconnect.com/p9mcv8v8qvg/>.

Next, to help libraries plan and prepare for Choose Privacy Week, OIF hosted “Choose Privacy Week Programming @ Your Library” on April 9. Webinar presenters introduced ideas and tools for privacy-related programming and outreach, with an emphasis on sample programs that have proved successful in school, academic, and public library environments. 101 individuals registered for the live event, and the recorded program has since been viewed 377 times. The archived recording may be viewed by visiting <http://ala.adobeconnect.com/p3rsvmcstxt/>.

On April 23, OIF offered “Defend the Freedom to Read: Reporting Challenges,” discussing the current state of controversy in libraries and ALA’s efforts to document as many challenges as possible. 213 individuals registered for the live event and there have been 236 additional views for the recorded program. The archived recording may be viewed

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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, delivered at the ALA Annual Conference in Chicago by FTRF President Candace Morgan.

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2013 Midwinter Meeting:

LITIGATION ACTIVITIES: LIBERATING LITERATURE

Throughout its history, the Freedom to Read Foundation has participated in or supported a number of important lawsuits seeking to preserve important First Amendment freedoms that did not directly involve the right to read freely in schools and libraries. Whether it was video games, depictions of animal cruelty, or lies about military honors, FTRF participated in these lawsuits because we believe that a First Amendment that is equally strong in all its parts is a certain bulwark against the censorship of words and ideas. But in truth, we feel FTRF is at its best when it is pursuing its core mission: defending the freedom to read in our libraries and schools.

The student's right to read is under particular threat these days. Whether it is fear of a particular book like *Persepolis* or a more generalized fear that students may learn to become independent thinkers, school and government officials are moving to suppress student access to books and materials in the curriculum that the officials find offensive or controversial.

The most infamous act of classroom censorship in recent history is the State of Arizona's closure of the Tucson Unified School District's (TUSD) Mexican American Studies (MAS) program pursuant to Arizona Revised Statute §15-112. §15-112 prohibits both public and charter schools from using class materials or books that "encourage the overthrow of the government," "promote resentment toward a race or class of people," are "designed primarily for pupils of a particular ethnic group," and "advocate ethnic solidarity instead of the treatment of pupils as individuals."

In June 2011, the State Superintendent of Instruction, John Huppenthal, declared that TUSD's MAS program was in violation of §15-12 and ordered the TUSD school board to close the program or pay a penalty amounting to 10% of TUSD's annual budget. As a result of Huppenthal's decree, the board eliminated the MAS program. In January 2012, all MAS teaching activities were suspended, the MAS curriculum was prohibited and books used in the courses were removed from classrooms, placed in boxes marked "banned," and put in storage.

A group of teachers and students sought to restore the MAS program by filing suit in federal district court against Superintendent Huppenthal and other state officials. Their

complaint, *Acosta, et al. v. John Huppenthal, et al.*, asserted that §15-112 was overbroad, void for vagueness, and violated their rights to free speech, free association, and equal protection. The court quickly dismissed the teachers for lack of standing but then proceeded to consider the students' claims. On March 8, 2013, the court issued an opinion largely upholding §15-112, holding that the courts owe "considerable deference" to the state's "authority to regulate public school education." While the court struck down one provision of §15-112 barring courses "designed primarily for pupils of a particular ethnic group," it rejected the argument that the other provisions of the statute violated the students' First Amendment rights and their right to equal protection under the law.

I am pleased to report that the Freedom to Read Foundation will be participating in an effort to overturn the district court's decision and restore the MAS program to the Tucson schools. The students have appealed the district court's decision to the Ninth Circuit Court of Appeals and FTRF will be taking the lead in writing and filing an *amicus curiae* brief in support of the student plaintiffs that will argue that §15-112 is unconstitutional. The brief is due in October 2013.

I am equally pleased to inform you that *A.W. et al v. Davis School District*, the lawsuit filed to challenge the decision by the Davis County, Utah School District to remove all copies of the children's picture book *In Our Mothers' House* from the district's library shelves, has reached a successful conclusion. If you recall, Davis County removed the book following a parent's complaint largely because it believed the book constituted "advocacy of homosexuality" in violation of Utah's sex education law. After reviewing the lawsuit with its legal counsel, the school district agreed to return *In Our Mothers' House* to the school library shelves while the parties negotiated a settlement.

In the settlement agreement, the school district agreed that it would not restrict access to *In Our Mothers' House* based on content, would not rely on the Utah sex education statute to restrict access to books on library shelves that were available for discretionary use by the students, and would pay the ACLU \$15,000 to cover attorneys' fees. While FTRF was not a participant in the case, FTRF consulted with the ACLU attorneys and provided expert advice regarding the intellectual freedom issues at stake in the case.

LITIGATION ACTIVITIES: DEFENDING THE RIGHT TO ACCESS THE INTERNET

FTRF also consulted in another recently settled lawsuit challenging a library's use of Internet filters to block access to sites favorably describing minority religions. Annika Hunter, the plaintiff in *Hunter v. City of Salem and*

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Platt, Feingold win FTRF honors

The Freedom to Read Foundation (FTRF) has announced that past FTRF president Judith Platt and former Wisconsin senator Russell Feingold are the recipients of the 2013 Freedom to Read Foundation Roll of Honor Awards.

Judith Platt is the Director of Free Expression Advocacy for the Association of American Publishers (AAP). In that role, Platt has led numerous coalitions that work to strengthen free speech and privacy rights, including Banned Books Week, the Campaign for Reader Privacy, the Kids Right to Read Project, and the Media Coalition. First elected to the FTRF Board in 1999, Platt served as president from 2007–2009. She was elected to her sixth two-year term in 2012.

Sen. Russell Feingold served in the U.S. Senate from 1993–2011. In 2001, he was the only Senator to vote against the USA PATRIOT Act, based on civil liberties concerns. When the Act came up for reauthorization in 2005 and 2009, he led efforts to correct some of its most controversial elements, including trying to narrow the FBI's ability to obtain library, bookstore, and business records outside regular court channels. After leaving the Senate in 2011, Feingold formed Progressives United, a public education and advocacy organization founded in the wake of the Citizens United Supreme Court decision.

“Judith Platt’s dedication to the Freedom to Read Foundation and the principles we hold dear is unimpeachable,” said Christine Jenkins, chair of the Roll of Honor Committee. “She is a great leader within the Foundation and has been a tremendous ally via her work at AAP. Her unstinting commitment to bringing together publishers and libraries on common issues—in particular opposition to censorship and the support of privacy rights—is the true hallmark of her illustrious career. We are elated to honor her with this award.”

Jenkins continued, “FTRF honors Russ Feingold’s leadership by example in support of individuals’ civil liberties by his courageous stance against the USA PATRIOT Act in 2001 and his persistent efforts in opposition to the USA PATRIOT Act in 2006 and again in 2009.”

FTRF has been involved in multiple cases against the USA PATRIOT Act, including supporting the “Connecticut Four” librarians who successfully litigated against a Patriot Act-authorized National Security Letter and associated gag order several years ago.

The Roll of Honor Awards were presented at the 2013 ALA Annual Conference during its Opening General Session. The Roll of Honor was established in 1987 to recognize and honor those individuals who have contributed substantially to FTRF through adherence to its principles and/or substantial monetary support.

report debunks links between gun violence and media

The popular notion that media causes people to kill is based on flawed research, and those who support it ignore ample evidence to the contrary, according to a report issued June 24 by Media Coalition, Inc., a trade association that defends the First Amendment rights of mainstream media.

The group issued the 13-page report, “Only a Game: Why Censoring New Media Won’t Stop Gun Violence,” in an effort to educate the public and in response to politicians and interest groups that continue to play the blame game in the wake of recent tragic shooting incidents.

“The claim that video games cause violence has become a convenient narrative that is just not supported by the facts and is used as a crutch to avoid the more complex – if politically unpopular – issues,” said David Horowitz, Executive Director of Media Coalition. “Our report explains that when independent bodies review the research they find no studies that show that video games cause actual violence, and the studies that claim a connection between new media and aggression are flawed, in dispute, and ignore obvious explanations for their results,” Horowitz added.

According to the report, the governments of Australia, Great Britain and Sweden each recently reviewed the research claiming a link between violent video games and aggressive behavior and came to the same conclusion that it is flawed and inconclusive. As a result, none of these countries – despite having less stringent speech protections than the United States – have imposed restrictions on video games with violent content.

Similarly, in 2011 the U.S. Supreme Court rejected a California law aimed at restricting the sale of violent video games, declaring that they deserve the same First Amendment protection as books, plays, movies and other media. The Court reviewed the science on both sides of the debate and ruled that the research offered to justify the law had “significant, admitted flaws in methodology.”

Among the report’s key findings:

- Crime statistics do not support the theory that media causes violence.
- Research into the effects of video games on aggression is contested and inconclusive. Much of it suffers from methodological deficiencies and provides insufficient data to prove a causal relationship.
- Censorship of violent content is barred by the First Amendment for all types of media, but industry self-regulation works.

Earlier this year, President Obama called for the Centers for Disease Control and Prevention to renew scientific

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MIT releases report on Swartz case

A long-awaited report released July 30 by the Massachusetts Institute of Technology found that the university made mistakes but engaged in no wrongdoing in the case of Aaron Swartz, a renowned programmer and charismatic technology activist who committed suicide in January while facing a federal trial on charges of hacking into the MIT computer network.

MIT did not urge federal law enforcement officials to prosecute Swartz, the report found, and remained neutral in the case. But the university “missed an opportunity to demonstrate the leadership that we pride ourselves on,” based on its reputation as an institution known “for promoting open access to online information, and for dealing wisely with the risks of computer abuse.”

Swartz was arrested in January 2011 after downloading more than four million scholarly articles from the fee-based online archive JSTOR; to gain access, he evaded multiple efforts to block him, and even entered an unlocked closet in the basement of a campus building to plug directly into the network.

Swartz had long argued for public access to many kinds of important documents hidden behind walls of copyright. What he intended to do with the documents has not been established, but he was a co-author of a “guerrilla open-access manifesto” that stated, “We need to take information, wherever it is stored, make our copies and share them with the world.”

The criminal case drew worldwide attention, in part because Swartz was just 26 at the time of his death and because the maximum possible sentence, initially said to be more than 30 years, suggested prosecutorial bullying to critics of the case, and illustrated the harshness of laws like the Computer Fraud and Abuse Act. (Negotiations had taken place for a sentence of less than a year but were no longer under way at the time of Swartz’s death.)

In an open letter, the MIT president, L. Rafael Reif, applauded the “careful account” that he said set “the record straight by dispelling widely circulated myths.” The report, he said, “makes clear that MIT did not ‘target’ Aaron Swartz, we did not seek federal prosecution, punishment or jail time, and we did not oppose a plea bargain.”

In a briefing for reporters, however, Reif also said “we did recognize that the government had its job to do in upholding the law.” MIT, he said, “acted appropriately.”

Reif said he read the report “with a tremendous sense of sorrow” over the pain to Swartz’s family and friends, and to the Internet community, which “lost an exceptional leader.”

The 182-page report was written by a panel led by Hal Abelson, a professor of computer science and a well-regarded activist on the open-access issues championed by Swartz. The panel interviewed about 50 people and

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school web filtering needs makeover

During a recent symposium on the Children’s Internet Protection Act (CIPA), experts agreed that though the law backed by the Federal Communications Commission (FCC) has good intentions, school web filtering software and practices need a major overhaul.

“There are a lot of changes we need to acknowledge that have happened in the last ten years,” said one panelist. “For instance, Bring Your Own Device [BYOD] adoption. I know in the FCC’s recent update to eRate they’re asking input on how they should cover BYOD in relation to CIPA.”

But perhaps the most prevalent concern among all panelists during the “Revisiting the Children’s Internet Protection Act: 10 Years Later,” Google+ hangout—part of the American Library Association’s (ALA) Office for Information Technology Policy (OITP) and Office for Intellectual Freedom’s (OIF) larger project on CIPA and access to information—was school web filtering and its effects on 21st century student teaching and learning.

According to Deborah Caldwell-Stone, deputy director of the OIF, many of the lawsuits over the last decade involving schools and CIPA deal with issues in constitutional access to information. Caldwell-Stone explained that though CIPA was originally created to protect children against sexually explicit images, schools and libraries usually have very limited control or discretion when it comes to school web filtering. In fact, most filtering is provided by vendors.

“The issue with CIPA is that it cannot suppress ideas, such as gay and lesbian information, access to Facebook, etc. Many times people think it’s the schools or libraries limiting access to these sites. But it’s the vendors, many of whom often have an agenda—for example, religious missions—that block access to information.”

Sarah Houghton-Jan, the information and web services manager for the San Mateo County Library, says many filters are only customizable if they are extremely expensive.

“The way filters work is by blocking IP addresses; keyword analysis—for example, ‘sexy videos’; link analysis; and pixel analysis for things like skin tone and body parts. But all filters differ based on how expensive and sophisticated they are,” she said.

But no matter how expensive or sophisticated the filter, Houghton-Jan says that even the best filter is only 83 percent effective for factors such as link analysis and IP addresses, and only 50 percent accurate for images or videos.

“The question then becomes: ‘Is it okay to use products that are inaccurate at least 20 percent of the time and more for images and videos?’” asked Houghton-Jan.

She also argued that when vendors say that their product

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copyright dateline



libraries

Anniston, Alabama

At White Plains Middle School, teen vampires in the library were just too much for one adult. At B.B. Comer High School in Sylacauga, a handbook on pregnancy and childbirth was moved to the reference shelves, with parental permission required for checkout. At Winterboro High School, the novel *White Oleander* stayed on school library shelves, though kids need a parent's permission to check it out, too.

Those local school library concerns were among several uncovered by *Anniston Star* reporters and University of Alabama journalism students in a months-long, statewide effort to find out which books are challenged by parents—and which are ultimately banned from libraries—in the state's 132 public school districts.

In Alabama, as in other states, parents who want a book pulled from the shelves can file a form with a school district stating reasons for banning the book. Those forms go to a school library committee for review and the book in question may be pulled from the shelves as a result.

The *Star*/University of Alabama team set out last fall to collect all book challenge forms filed in the past five years in the state's 132 city and county school districts and a few state-supported schools that aren't part of typical districts. Some districts responded immediately; some responded after multiple requests for the forms, which are public record.

Nine districts reported challenges, a few of which predated the five-year span of the records request. Seventy-seven districts reported no challenges in the past five years; 46 districts didn't provide any information at all.

"Transparency is important for democracy," said Barbara Jones, director of the American Library Association's Office

of Intellectual Freedom. "Schools are no different. We need to know what's going on." Jones said failure to report book challenges is an epidemic among school districts. "Only 20 percent of challenges get reported because people are afraid," Jones said.

The vampire has been a staple of melodrama and fiction ever since Bram Stoker introduced *Dracula* in 1897. For one Oxford man, however, a teen-focused series of vampire novels took the bloodletting a little too far for kids.

In 2010, Gerald Lewallen challenged the presence of two books in the "Chronicles of Vladimir Tod" series in the White Plains Middle School library. Lewallen said he was acting on behalf of a child who was in his care at the time.

The book series focuses on the life of Vladimir Tod, an eighth-grader whose mother was human and whose father was a vampire. Tod doesn't kill humans for their blood (though vampire villains in the books do) and he survives on raw beef and blood swiped from a local hospital, which he sometimes drinks from a coffee cup.

Lewallen said he was concerned about the effects the books might have on kids who are inclined toward self-cutting and other destructive behaviors. On the challenge form, he stated the book could be harmful to kids who are "thinking about cutting or hurting someone, killing someone to see what a rush they might get, kill each other, or biting." Lewallen said he never heard back from the school system after filing the complaint. A school official said the books are still on the shelves.

The author of the series said her books had never been challenged in a school before, at least to her knowledge. "It's rather insulting. There's no foul language in any of my books," Heather Brewer said. Brewer said her daughter started reading the series when she was nine years old, which opened up a discussion about what it feels like to not fit in.

The series follows the teen vampire through one school grade per book, starting with *Eighth Grade Bites* and ending with *Twelfth Grade Kills*. Lewallen, the White Plains Middle School challenger, requested removal of only the tenth- and eleventh-grade books in the series.

Brewer said she writes with teenagers in mind, but doesn't necessarily think about how each book fits its grade level. "As far as age appropriate, I write the story that I want to tell," she said. "The right person will find their way to the book."

Brewer said she's heard from many readers who say the books helped them deal with depression or bullying. "I'm contacted daily from readers who say reading the books have saved their lives," she said.

For school librarians, the decision about whether to keep a book or hide it away is a tricky one. Two Talladega County school librarians who have handled book challenges during the past ten years say the solution lies in handling the challenges efficiently and respectfully.

“I feel the most important things to consider when reviewing a book are: is the material appropriate for the age level, is the material well presented, (and) does the material support the curriculum of the school?” said Teresa Offord, library media specialist at B.B. Comer High.

Talladega hasn’t had a challenge in the past three years. But in 2005, a B.B. Comer parent protested the presence of a pregnancy guide—Sheila Kitzinger’s *Complete Book of Pregnancy and Childbirth*—on library shelves.

One in every eight births in Talladega County is to a teen mother, according to the Alabama Department of Public Health.

In the book challenge, the parent claimed the material showed “explicit drawings of how to make love while pregnant” and “pornographic pictures that should not be viewed by children.” The school assembled a committee to review the book. Offord said the committee agreed to keep the book, based on the reputation of its author and publisher and the committee’s belief that the book did contain helpful information on the process of childbirth. Still, the committee did agree to move the book to a reference shelf, and restrict it so that only kids with parental permission could check it out.

Offord said it wasn’t an easy decision. “It is a slippery slope at times,” Offord said. “As a media specialist, I want to supply my students with informational books, books that show all sides of a story, not just one viewpoint.”

Librarians at Winterboro High in Alpine made a similar decision in 2006 when a parent challenged *White Oleander*, Janet Fitch’s novel about a troubled young girl who is abandoned by her mother and forced into a series of foster homes. The parent wrote that the book had too much sexual content, and included foul language that, if a child repeated it at school, would lead to the child being disciplined.

The school’s review committee concluded that the book’s message of a brave young girl conquering difficult circumstances was an inspiration for children, particularly those in foster care. But the challenge did lead the school to place parental-permission restrictions on the book, based on the idea that it was not appropriate for the youngest students at the school.

“In our instance, the book was not age-appropriate for a seventh-grader and changes had to be made with the circulation of the book,” said Tina Wheeler, the school’s librarian. “However, we did not remove the book from circulation entirely.”

Book-banning debates can sometimes create more heat than light, particularly when the book being challenged is prized as a classic by the rest of the world. Denizens of the Internet still poke fun at Alabama’s State Textbook Committee for a 1983 proposal to ban *The Diary of Anne Frank* on the grounds that the book was “a real downer.” School districts elsewhere have faced similar ridicule for objections to widely-read books ranging from *To Kill a Mockingbird* to *Slaughterhouse-Five*.

Some school officials say the current book-challenging process, in which parents fill out a form explaining their objections, can make the conversation more constructive. “Some people express themselves better when they write their thoughts down,” Offord said.

And schools sometimes find that writing back to the parents helps as well. It seems to have worked with the *White Oleander* challenge at Winterboro. “In our instance, we responded to this parent with a letter,” Wheeler said. “It is always important to assure the parent you are on their side and want what’s best for their student. It is never good to get defensive.”

Still, those correspondences are rarely seen by the rest of the community, even when a book gets pulled from the shelves. Getting school officials to discuss book challenges and their outcomes is often difficult.

When *The Star* asked Auburn City Schools for information on recent book challenges, assistant superintendent Cristen Herring said the system had seen just one challenge, to *Hunted: A House of Night Novel*, by P.C. and Kristen Cast. School officials denied repeated requests for any documents related to that challenge. However, after the story was published, Auburn officials supplied documents showing the book was challenged by a parent who objected to profanity, including the “f-word,” in the book. School documents show the review committee recommended the book remain on the shelves.

Mountain Brook school officials were more forthcoming. They told of one challenge in the past five years, to *Return of the Homework Machine*, by Dan Gutman. The school system kept the book, school officials said in an email. Still, Mountain Brook officials didn’t provide the challenge form or a copy of the school’s reply to the challenge.

Roughly one-third of the state’s districts provided no documentation at all—neither confirming nor denying any challenges in the past five years. According to the Alabama Press Association, all public records are open for public inspection unless a statute making them confidential expressly exempts them.

“I would like to think that most public officials are hesitant to grant access to public records because they are afraid they will violate a statute making them confidential or because they are not familiar with the access laws in general,” said Dennis Bailey, general counsel for the Alabama Press Association. “However, over my 30-plus years practicing this area of law—and my work as a reporter/editor before that—I have seen too many instances when the true reason the records were withheld was to cover-up the dishonesty or incompetence of the public official refusing access,” Bailey added.

At least one district lets kids have a voice in the debate over what’s on school library shelves, school records show.

In 2011, a parent challenged Pete Hautman’s novel *Invisible* at Sanford Middle School in Lee County. The book tells the story of a 17-year-old fighting a losing battle

with mental illness. The parent objected to the book, school records show, because of objectionable language in the final chapters.

“It uses God’s name in vain!” the parent wrote. “That is very sick for kids to have to read.”

The school district convened a panel to review the book—and asked two 12-year-olds who had read the book to complete forms describing their experience with *Invisible*. Both had read the book in the fifth grade. One student wrote that the book was appropriate for fifth-graders “because it talks about things that could actually happen.” The other wrote that it was a good book, but “had some parts that aren’t appropriate for fifth- and sixth-graders.”

The school panel declared the book “thought-provoking” and said its virtues outweighed the language in the last chapters. They kept the book, but flagged it for mature readers, school records show. Reported in: *Anniston Star*, July 14.

Gering, Nebraska

A father was fuming after his son caught a glimpse of a man watching pornography at the Gering Public Library. “They were on the computers, checking out books, doing whatever, and my wife had noticed and my son had also noticed, that another person in the library was using one of the computers to view pornography,” said parent Michael Onstott.

Onstott’s wife approached library staff about what she and her son had witnessed but was told the man wasn’t breaking library policy. “She was basically dismissed, saying there’s nothing that they can do about it,” says Onstott. “He wasn’t doing anything illegal and that it’s within their current policies not to do anything.”

Library Director Diane Downer said the Gering Public Library’s policy follows the American Library Association’s guidelines. “It doesn’t specifically say ‘no pornography,’” said Downer. “Obscene? Yes, but what’s obscene to someone is not always obscene to someone else.”

Onstott wrote a letter of concern to city council after learning about the library’s policy. Mayor Edwin Mayo said he’s sympathetic to the issue but his hands are tied. “On the adult side, the adult used computers, they can not have those filters on,” said Mayo. “There are Supreme Court rulings that say you can not prevent someone from having access to these types of materials.”

Onstott said he will do whatever it takes to get this policy changed. “If I have to go to the state to get a law changed, I plan on riding this to the end,” he said. “I’m in it to win it. And I think everyone that has any values for their kids, their grandkids, nieces, nephews... they’re going to understand. This has to be changed.”

Mayor Mayo says this is a tough situation because if you block all access to all materials that people deem inappropriate, then they get complaints on the other side of it, too. Reported in: *kotano.com*, June 15.

Brooklyn, New York

Some parents are outraged over the access children have to erotic books at the Brooklyn Public Library. Assemblyman Dov Hikind has joined concerned mothers of the Borough Park neighborhood in expressing their disapproval and disgust over access to erotic books in their public libraries. Hikind and the parents say they’re not suggesting that adult books be removed from shelves, but they want the books put in a separate room away from the children’s books.

“It is beyond anything that is acceptable in a public library that young people should be able to access this,” Hikind said. “I am not asking for censorship of any books for adults who want them,” he told a press conference. “The issue is removing such books from the ready access of children. I am certain that the overwhelming majority—if not unanimity—of parents in our city would be appalled to find such books readily available to their children.”

Following complaints by constituents, Assemblyman Hikind’s staff surveyed branches of the public library in Brooklyn where they found such titles as *Best Gay Erotica*, *Lux’s Practical Erotica Adventure*, and *Girls Who Score: Hot Lesbian Erotica*, all allegedly within reach of small children.

A spokesperson for the Brooklyn Public Library said the library follows American Library Association guidelines, which oppose restriction on access to services, material and facilities. The library says it is committed to ensuring young patrons only have access to age-appropriate materials. Young children under 13 must have parental approval to access any books other than juvenile materials.

Still, parents expressed outrage with library’s policy. “These kids walk in and they see this, it’s disgusting, I don’t care where you come from, you want children to be children,” Raizy Horowitz said at a news conference.

“Because of the way fiction books are placed on library shelves, inappropriate books often end up on the very bottom shelves, clearly within reach of the smallest children,” said Hikind. “This kind of content would never be allowed in schools nor placed within a child’s reach by retailers. Certainly our public libraries can do more to keep such books out of the reach of unsuspecting children.”

In a letter to the heads of New York City’s Public Libraries, the Assemblyman asked for immediate action to better protect the city’s children from inappropriate books their parents would never want them to see, let alone expect to find in the public library within easy reach of a child. Reported in: *news12.com*, July 10; *bensonhurstbean.com*, July 11; *dovhikind.blogspot.com*, July 10.

Mansfield, Pennsylvania

Mansfield University of Pennsylvania librarian Scott R. DiMarco intentionally banned a book within his library system to demonstrate “what harm censorship can really do to a community.”

DiMarco wrote about his censorship exercise in *College & Research Libraries News*. The librarian picked *One Woman's Vengeance*, a book self-published on Lulu by Mansfield University public relations director Dennis R. Miller. Here's what DiMarco found: "on a campus of 3,000, only eight people actually asked for a meeting with me to discuss the reasons I banned the book and to discuss what could be done to reverse the ban. The overwhelming number of comments were complaints about how they felt betrayed by this action or their frustration with the administration. Some used Facebook as a forum to make rude comments from the relatively safe distance social media provides."

When the exercise was over, DiMarco had taught readers a simple lesson. If someone successfully challenges a book in your community, reach out directly to the community leaders who made the decision to remove the book. Reported in: mediabistro.com, July 17.

schools

Adams County, Colorado

A debate over the use of Toni Morrison's *The Bluest Eye* and other texts has erupted in Adams County. A group of Concerned Parents started their petition to remove *The Bluest Eye* and other "bad" books, as part of their latest appeal to the school board. Few if any of the complainants read the book in its entirety. In July, however, Legacy High School student Bailey Cross created a counter-petition after hearing about the censorship issue. (Though it had been going on for months, little to nothing was known about it.) In just a week, the petition garnered 1,000 signatures, most of them local.

The Bluest Eye was being used in Legacy High School's Advanced Placement English Classes. It was on the district's approved list of texts. Morrison is a Pulitzer Prize-winning author and Nobel Prize laureate. Her books are taught in upper high school grades and college classrooms across the country.

A notice was sent home to students before the book was read to let parents and students know what they would be reading and why and an alternate assignment was offered to those who wanted it. Half a dozen students of about 150 opted to read one of the alternative texts and received instruction on those works outside of class time. Reported in: ncacblog.wordpress.com, July 17.

Tampa, Florida

Just over a month after *The Perks of Being a Wallflower*, by Stephen Chbosky, was restored to classrooms in Glen Ellyn, Illinois (see page 201), the popular teen novel's inclusion on a school reading list was again challenged, this time by the mother of a ninth grader in Tampa. In a letter

to officials at Wharton High School, Lori Derrico said that her daughter "lost a big chunk of innocence" by reading the book and asked that it be removed from the summer reading list for incoming freshmen.

Although there was an alternate reading assignment available—John Knowles' *A Separate Peace*, which has seen its own share of challenges since being published in 1959—this was not made clear on the school's website, where the reading list was posted. Nevertheless, Derrico said that *Perks* shouldn't even be an option because it deals with sexual situations and drug use. In her letter, she asked:

"What happened to *To Kill a Mockingbird*, *The Secret Life of Bees*, *Life of Pi*, *The Great Gatsby*, *The Giver*, or *Three Cups of Tea* or any of the other thousands of award-winning books that don't mention sex positions for teens and homosexuals or doing drugs with school faculty?" Derrico asked.

Ironically, three of the six books Derrico mentioned—*To Kill a Mockingbird*, *The Great Gatsby*, and *The Giver*—have been challenged or banned in the past.

The Hillsborough County school district has yet to respond to the challenge beyond pointing out the alternate book. Reported in: cblfd.org, July 23.

Clarke County, Georgia

Clarke County's school board has decided that its superintendent must reconsider his decision to allow a book in classrooms after it drew objections by parents. Administrators thought the book should not be removed from schools, and that students can relate to its story. Superintendent Philip Lanoue decided parents could opt out if they didn't want their children to read *And the Earth Did Not Devour Him*, by Tomas Rivera.

The book is the story of a Mexican boy's life in a migrant family in the 1940s and 1950s, with themes of family life and tensions, getting an education and growing up, according to an email Clarke County Deputy Superintendent Noris Price sent to the parents saying administrators would not remove the book. "We think the themes listed above speak directly to many of our students," Price said.

Parents of a seventh-grader had asked school officials to prohibit the book from being part of a class reading list, saying a paragraph in the book is full of offensive language. Most school board members agreed with the parents and voted 5-2 June 13 to ask the superintendent to reconsider his decision.

"It's got language in there that's not appropriate for our children to read," said Chad Lowery at the board meeting. "We just don't think it has any place in our classroom, that kind of language."

Board members Sarah Ellis and David Huff voted to uphold Lanoue's decision. Carol Williams, Charles Worthy, Carl Parks, Linda Davis and Denise Spangler voted to ask Lanoue to reconsider his decision. Two other board

members were absent.

“My intent is for this book not to be on the seventh grade reading list,” Davis said

The objecting parents found one passage particularly offensive, a profanity-laced outburst from a man frustrated by unjust treatment and conditions migrant workers endure.

Lanoue wrote the parents on May 9 to say the book would remain available to students with parent consent. “This decision is based on the recommendation that the one paragraph does not overpower the other literary elements that (Rivera’s) book can offer our students,” Lanoue wrote.

In 1970, Rivera’s book won the first Quinto Sol literary award, established by a California publisher to encourage and promote Chicano authors. The son of Spanish-speaking migrant workers, Rivera grew up to become a college professor and administrator. He was chancellor of the University of California at Riverside when he died in 1984 at the age of 48. Reported in: *Marietta Daily Journal*, June 14; *Athens Banner-Herald*, June 15.

Queens, New York

Queens sixth-graders were asked to read a book that talked about masturbation—until seething parents got the title pushed off the summer reading list.

Bowing to pressure from the outraged parents and after inquiries from the *Daily News*, the principal of Public School/Middle School 114 in Rockaway Park announced July 31 that *The Absolutely True Diary of a Part-Time Indian*, by Sherman Alexie, was no longer required reading. All incoming sixth-graders had been expected to write a graded-essay on the book, parents said.

“It’s about . . . masturbation—which is not appropriate for my child to learn at 11,” said Kelly-Ann McMullan-Preiss, 39, of Belle Harbor, who refused to let her son read the book. “It was like *Fifty Shades of Grey* for kids.”

Lines in author Sherman Alexie’s award-winning young adult novel include: “And if God hadn’t wanted us to masturbate, then God wouldn’t have given us thumbs. So I thank God for my thumbs.”

McMullan-Preiss said she didn’t want a school assignment to dictate when she had the awkward conversation about masturbation with her son. She planned to circulate a petition against requiring kids to read the book before the school abruptly changed its position.

Parent Teacher Association Co-President Irene Dougherty said at least eight parents had planned to boycott the book. “Not every child is emotionally mature enough at 11 years of age to handle this content,” Dougherty said. “It really should be a parent’s decision how much information is given to their children.”

The book, which tells the story of a Native American who transfers into an all-white high school, won the 2007 National Book Foundation award for Young People’s

Literature. “It’s a landmark work in young people’s literature,” said the foundation’s executive director Harold Augenbraum.

After the book was pulled from an Oregon classroom in 2008, Alexie defended it: “Everything in the book is what every kid in that school is dealing with on a daily basis, whether it’s masturbation or racism or sexism or the complications of being human,” Alexie said. “To pretend that kids aren’t dealing with this on an hour-by-hour basis is a form of denial.”

School districts in Stockton, Mississippi, and Richland, Washington, banned Sherman’s memoir in 2010 and 2011.

Teri Lesesne, who teaches young adult literature at Sam Houston State University, in Huntsville, Texas, said everyone should read the book at some point in their lives. “[But] I’m not sure I’d give it to sixth-graders,” she said. “I’m not sure that sixth-graders are young adults.” Reported in: *Daily News*, August 1.

publishing

Washington, D.C.

Playboy, *Penthouse* and other sex-themed magazines will no longer be sold at Army and Air Force exchanges, in a move anti-pornography activists have described as a victory.

“We had military families calling us after seeing porn on the shelves,” Morality in Media Spokesperson Iris Somberg said. “The exchanges are supposed to be a safe place for families to go do their shopping.”

Despite the celebrations of anti-pornography activists, especially Morality in Media, store operators insist that halting sales of the magazines is a business decision based on falling sales, not political pressure. Members of the Army will still have access to pornography online and can still bring external pornography onto bases.

The adult magazines posed particular difficulties to the stores because they had to be displayed out of reach of children.

Morality in Media said it would encourage urging operators of the Navy and Marine Corps to follow the Army’s lead.

While sales of the 48 “adult sophisticate” magazines have been halted, a collection of 891 periodicals is being discontinued from the Army areas. Other titles include *English Gardens*, *SpongeBob Comics*, the *New York Review of Books* and the *Saturday Evening Post*.

Chris Ward, a spokesperson for the Army and Air Force Exchange Service, said the reduction in magazine titles would allow for more popular products and 33 percent extra room. He added that newsstand sales had declined by 86 percent since 1998, considering there are so many online alternatives available. Reported in: opposingviews.com, August 1.

foreign

Lahore, Pakistan

A court in Pakistan has ordered a continuation of the block on YouTube in the country, after the government argued that a removal of the ban would have implications on law and order in the country.

YouTube was banned in Pakistan in September over a controversial video clip, called “Innocence of Muslims,” which mocked Prophet Muhammad. The country’s telecom regulator said it was blocking the entire site as it was not able to separately block individual URLs (uniform resource locators) linking to copies of the video.

The plaintiff, Bytes For All, Pakistan, has argued that the Pakistan Telecommunication Authority (PTA) has Internet filtering technology that is already used to selectively filter Internet content, said Shahzad Ahmad, country director of the civil rights group. A report released in June by Citizen Lab, based at the Munk School of Global Affairs at the University of Toronto, claimed, for example, that Pakistan is actively filtering content, with Netsweeper filtering devices actively used to censor content on an ISP-wide level in Pakistan.

Bytes for All had asked the court for an interim order unblocking YouTube. “We wanted the government to go ahead and block the 700 to 800 URLs with the blasphemous content, and remove the block on the rest of the site,” Ahmad said. He alleged that the government is intent on continuing to block YouTube as part of its overall plan to control Internet access in the country. The YouTube issue is part of a broader petition by Bytes For All against Internet censorship in the country.

Justice Mansoor Ali Shah of the Lahore High Court noted that the ban on YouTube is negatively impacting citizens, specially students, and asked the government to resolve the issue with information technology experts, and submit a report by July 25 on how to deal with the blasphemous URLs and make the rest of the platform available, Ahmad said.

Google last year blocked the controversial video in some countries like India and Saudi Arabia where it was illegal, but not in Pakistan where it did not have a local site. The company said at the time that where it had “launched YouTube locally and we are notified that a video is illegal in that country, we will restrict access to it after a thorough review.”

Pakistan has a history of limiting access to YouTube videos. Reported in: *PC World*, July 5.

Jeddah, Saudi Arabia

A Saudi court has sentenced an activist to seven years in prison and 600 lashes for violating the nation’s

anti-cybercrime law, Human Rights Watch reported July 31. A Jeddah Criminal Court found Raif Badawi, who has been in prison since June 2012, guilty of insulting Islam through his website and in television comments.

“This incredibly harsh sentence for a peaceful blogger makes a mockery of Saudi Arabia’s claims that it supports reform and religious dialogue,” said Nadim Houry, the deputy Middle East director at Human Rights Watch. “A man who wanted to discuss religion has already been locked up for a year and now faces 600 lashes and seven years in prison.”

Badawi’s lawyer, Waleed Abu al-Khair, told Human Rights Watch that Judge al-Harbi read the verdict July 29.

Ensaf Haidar, Badawi’s wife, said she’s devastated by the news. “I don’t know what to do,” Haidar said. “Raif did nothing wrong.” Haidar and the couple’s three children now live in Lebanon. Estranged from her family, Haidar said it would be impossible to take her children back to Saudi Arabia. The stigma is too strong there.

“You feel like everybody’s accusing you,” she said, close to tears, in an April interview. “Like everybody’s against you, at war with you.”

Badawi’s legal troubles started shortly after he started the Free Saudi Liberals website in 2008. He was detained for one day and questioned about the site. Some clerics even branded him an unbeliever and apostate. Last summer, Human Rights Watch released a statement urging Saudi authorities to free Badawi.

“Saudi authorities should drop charges and release the editor of the Free Saudi Liberals website for violating his right to freedom of expression on matters of religion and religious figures,” a statement from the group said at the time.

Rights groups accuse Saudi authorities of targeting activists through the courts and travel bans. Many were outraged when two of the country’s most prominent reform advocates, Mohammed Al-Qahtani and Abdullah Al-Hamid, were sentenced in March to ten years in prison a piece.

Amnesty International called that trial “just one of a troubling string of court cases aimed at silencing the kingdom’s human-rights activists.”

Asked in January about accusations that Saudi Arabia is cracking down on dissent, Maj. Gen. Mansour Al-Turki, spokesman for the Saudi Interior Ministry, said, “At the Interior Ministry, our area of responsibility is security.” He added, “My understanding is that these cases are being looked at by the courts now. Nobody will comment on cases being looked at by the courts.” Reported in: *cnn.com*, July 31.

from the bench



U.S. Supreme Court

Groups receiving federal financing to combat AIDS abroad may not be required to adopt policies opposing prostitution, the Supreme Court ruled June 20. Under a 2003 law, the federal government has distributed billions of dollars to private groups to help fight AIDS around the world, imposing two conditions in the process. First, the money may not be used “to promote or advocate the legalization or practice of prostitution and sex trafficking.” That condition was not before the court.

The question for the justices was whether the second condition, requiring recipients to have “a policy explicitly opposing prostitution and sex trafficking,” passed constitutional muster.

Chief Justice John G. Roberts Jr., writing for a six-justice majority, said the condition ran afoul of the First Amendment because it required recipients “to pledge allegiance to the government’s policy of eradicating prostitution.”

He said the groups challenging the law feared that “adopting a policy explicitly opposing prostitution may alienate certain host governments, and may diminish the effectiveness of some of their programs by making it more difficult to work with prostitutes.”

Marine Buissonniere, the director of the Open Society Public Health Program, one of the groups that challenged the condition, said the policy was counterproductive. “Public health groups cannot tell sex workers that we ‘oppose’ them, yet expect them to be partners in preventing HIV,” she said in a statement. “Condemnation and alienation are not public health strategies.”

Chief Justice Roberts acknowledged that the Supreme Court’s jurisprudence on “unconstitutional conditions” was confusing. As a general matter, he said, the government has no obligation to spend money, just as recipients are not

required to take the government’s money. But sometimes, he wrote, “a funding condition can result in an unconstitutional burden on First Amendment rights.”

“The line is hardly clear,” the chief justice wrote, but it is crossed when the government seeks “to leverage funding to regulate speech outside the contours of the program itself.”

The condition requiring groups receiving AIDS money to adopt an antiprostitution policy was on the wrong side of the line, he said. “A recipient cannot avow the belief dictated” by the government, he wrote, “and then turn around and assert a contrary belief, or claim neutrality, when participating in activities on its own time and dime.”

Chief Justice Roberts rejected an argument by the Obama administration that the requirement to adopt a policy was needed to protect the prohibition on the use of government money to promote prostitution. Money is fungible, it said, and the availability of government money could free up private money to promote prostitution.

The Supreme Court accepted a similar argument in *Holder v. Humanitarian Law Project*, a 2010 decision that said the First Amendment did not protect benign assistance in the form of speech to groups that the government said had engaged in terrorism. Chief Justice Roberts, who wrote the majority opinion in the 2010 case, said the earlier case was different because there had been evidence that “support for those organizations’ nonviolent operations was funneled to support their violent activities.”

Justices Anthony M. Kennedy, Ruth Bader Ginsburg, Stephen G. Breyer, Samuel A. Alito Jr. and Sonia Sotomayor joined the majority decision.

In dissent, Justice Antonin Scalia said the contested condition did nothing more than allow the government to “enlist the assistance of those who believe in its ideas.”

“That,” he continued, “seems to me a matter of the most common common sense.” He gave an example: “A federal program to encourage healthy eating habits need not be administered by the American Gourmet Society.” Justice Clarence Thomas joined the dissent.

Justice Elena Kagan recused herself from the case—*Agency for International Development v. Alliance for Open Society International*—presumably because she had worked on it as solicitor general.

In 2011, a divided three-judge panel of the United States Court of Appeals for the Second Circuit, in New York, blocked the law, saying it “compels grantees to espouse the government’s position on a controversial issue.”

In summarizing the majority opinion in the courtroom, Chief Justice Roberts said he could not improve on what Justice Robert H. Jackson had said in announcing a decision from the bench “70 years ago last Friday.”

That 1943 decision, *West Virginia State Board of Education v. Barnette*, struck down a law compelling public school students to salute the flag. “If there is any fixed star in our constitutional constellation,” Chief Justice Roberts

said, quoting Justice Jackson, “it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion, or force citizens to confess by word or act their faith therein.” Reported in: *New York Times*, June 20.

Human genes may not be patented, the Supreme Court ruled unanimously June 13. The landmark intellectual property decision is likely to reduce the cost of genetic testing for some health risks, and it may discourage investment in some forms of genetic research.

The case concerned patents held by Myriad Genetics, a Utah company, on genes that correlate with an increased risk of hereditary breast and ovarian cancer. The patents were challenged by scientists and doctors who said their research and ability to help patients had been frustrated.

After the ruling, at least three companies and two university labs said that they would begin offering genetic testing in the field of breast cancer.

“Myriad did not create anything,” Justice Clarence Thomas wrote for the court. “To be sure, it found an important and useful gene, but separating that gene from its surrounding genetic material is not an act of invention.”

The course of scientific research and medical testing in other fields will also be shaped by the court’s ruling, which drew a sharp distinction between DNA that appears in nature and synthetic DNA created in the laboratory. That distinction may alter the sort of research and development conducted by the businesses that invest in the expensive work of understanding genetic material.

The decision tracked the position of the Obama administration, which had urged the justices to rule that isolated DNA could not be patented, but that synthetic DNA created in the laboratory—complementary DNA, or cDNA—should be protected under the patent laws. In accepting that second argument, the ruling provided a partial victory to Myriad and other companies that invest in genetic research.

The particular genes at issue received public attention after the actress Angelina Jolie revealed in May that she had had a preventive double mastectomy after learning that she had inherited a faulty copy of a gene that put her at high risk for breast cancer.

The price of the test, often more than \$3,000, was partly a product of Myriad’s patent, putting it out of reach for some women. That price “should come down significantly,” said Dr. Harry Ostrer, one of the plaintiffs in the case, as competitors start to offer their own tests. The ruling, he said, “will have an immediate impact on people’s health.”

In a statement, Myriad’s president, Peter D. Meldrum, said the company still had “strong intellectual property protection” for its gene testing.

The central question for the justices in the case, *Association for Molecular Pathology v. Myriad Genetics*, was whether isolated genes are “products of nature” that may not be patented or “human-made inventions” eligible for patent protection.

Myriad’s discovery of the precise location and sequence of the genes at issue, BRCA1 and BRCA2, did not qualify, Justice Thomas wrote. “A naturally occurring DNA segment is a product of nature and not patent eligible merely because it has been isolated,” he said. “It is undisputed that Myriad did not create or alter any of the genetic information encoded in the BRCA1 and BRCA2 genes.”

“Groundbreaking, innovative or even brilliant discovery does not by itself satisfy the criteria” for patent eligibility, he said.

Mutations in the two genes significantly increase the risk of cancer. Knowing the location of the genes enabled Myriad to develop tests to detect the mutations. The company blocked others from conducting tests based on its discovery, filing patent infringement suits against some of them.

“Myriad thus solidified its position as the only entity providing BRCA testing,” Justice Thomas wrote.

Even as the court ruled that merely isolating a gene is not enough, it said that manipulating a gene to create something not found in nature is an invention eligible for patent protection. “The lab technician unquestionably creates something new when cDNA is made,” Justice Thomas wrote.

He also left the door open for other ways for companies to profit from their research. They may patent the methods of isolating genes, he said. “But the processes used by Myriad to isolate DNA were well understood by geneticists,” Justice Thomas wrote. He added that companies may also obtain patents on new applications of knowledge gained from genetic research.

Last year, a divided three-judge panel of a federal appeals court in Washington ruled for the company on both aspects of the case. All of the judges agreed that synthesized DNA could be patented, but they split over whether isolated but unaltered genes were sufficiently different from ones in the body to allow them to be protected. The majority, in a part of its decision reversed by the Supreme Court, said that merely removing DNA from the human body is an invention worthy of protection.

“The isolated DNA molecules before us are not found in nature,” Judge Alan D. Lourie wrote. “They are obtained in the laboratory and are man-made, the product of human ingenuity.”

Long passages of Justice Thomas’s opinion read like a science textbook, prompting Justice Antonin Scalia to issue a brief concurrence. He said the court had reached the right result but had gone astray in “going into fine details of molecular biology.”

“I am unable to affirm those details on my own knowledge or even my own belief,” Justice Scalia wrote.

The ruling followed a unanimous Supreme Court decision last year that said medical tests relying on correlations between drug dosages and treatment were not eligible for patent protection. Natural laws, Justice Stephen G. Breyer wrote for the court, may not be patented standing alone or

in connection with processes that involve “well-understood, routine, conventional activity.” Reported in: *New York Times*, June 13.

The Electronic Privacy Information Center (EPIC) on July 8 filed an emergency petition with the Supreme Court to stop the National Security Agency (NSA) from collecting the telephone records of millions of Americans.

The petition asks the Supreme Court to vacate the Foreign Intelligence Surveillance Court (FISC) ruling that “ordered Verizon to disclose records to the National Security Agency for all telephone communications ‘wholly within the United States, including local telephone calls.’” The order does not permit the NSA to listen to phone calls, but it does allow the agency to gather metadata such as the phone numbers of conversation participants, length of calls, time of conversations, location data, telephone calling card numbers, and unique phone identifiers.

EPIC explained in the petition that it is appealing directly to the Supreme Court because it cannot appeal to the secretive FISC—and no other court has the power to vacate a FISC order. “The plain terms of the Foreign Intelligence Surveillance Act (FISA) and the rules of the FISC bar EPIC from seeking relief before the FISC or Court of Review,” EPIC wrote. “The FISC may only review business record orders upon petition from the recipient or the Government.”

While the ruling that EPIC targets in its Supreme Court petition is from April 25 of this year, FISC rulings permitting broader collection of Americans’ data go back years. As the *Wall Street Journal* reported July 7, the NSA was able to gather phone data on millions of Americans because of classified FISC rulings in which the court redefined the word “relevant” in the context of surveillance to permit gathering of data on people even when they are not suspected of a crime.

“This change—which specifically enabled the surveillance recently revealed by former NSA contractor Edward Snowden—was made by the secret Foreign Intelligence Surveillance Court, a group of judges responsible for making decisions about government surveillance in national-security cases,” the *Journal* reported. “In classified orders starting in the mid-2000s, the court accepted that ‘relevant’ could be broadened to permit an entire database of records on millions of people, in contrast to a more conservative interpretation widely applied in criminal cases, in which only some of those records would likely be allowed, according to people familiar with the ruling.”

EPIC’s Supreme Court petition argues that “[i]t is simply not possible that every phone record in the possession of a telecommunications firm could be relevant to an authorized investigation.” The telephone surveillance order exceeds the scope of FISC’s jurisdiction under the FISA law, the petition argues. “[T]he statute requires that production orders be supported by ‘reasonable grounds to believe that the tangible things sought are relevant to an authorized investigation,’” EPIC wrote. “It is simply unreasonable to conclude that all

telephone records for all Verizon customers in the United States could be relevant to an investigation.”

EPIC is asking the Supreme Court for a “writ of mandamus,” which is “an order from a court to an inferior government official ordering the government official to properly fulfill their official duties or correct an abuse of discretion.”

EPIC’s petition notes that telephone metadata “can be directly linked to each user’s identity and reveal their contacts, clients, associates, and even the physical location.” EPIC itself is a Verizon customer and said its attorneys conduct “privileged and confidential communications” with government officials, members of Congress, and journalists. Because of EPIC lawsuits filed against the NSA, FBI, and other government bodies, “EPIC is in active litigation against the very agencies tracking EPIC’s privileged attorney-client communications,” the group wrote.

Although the NSA collects data on the communications of all Verizon users (and presumably those of other companies as well), the database can only be queried “when there is a reasonable suspicion, based on specific facts, that the particular basis for the query is associated with a foreign terrorist organization,” U.S. Director of National Intelligence James Clapper wrote in June.

“The collection is broad in scope because more narrow collection would limit our ability to screen for and identify terrorism-related communications,” Clapper wrote. “Acquiring this information allows us to make connections related to terrorist activities over time. The FISA Court specifically approved this method of collection as lawful, subject to stringent restrictions.”

The EPIC petition is one of several challenges to the NSA’s data collection. The American Civil Liberties Union (ACLU) in June filed a lawsuit seeking publication of FISC decisions on surveillance powers. In response, the Obama Administration defended the secrecy of the rulings.

Twenty-six U.S. senators have demanded “public answers” on the extent of the NSA spy program. And a legal challenge similar to EPIC’s is unfolding in the U.K., where Privacy International said it is trying to stop the U.K. government’s “indiscriminate interception and storing of huge amounts of data via tapping undersea fibre optic cables.” Reported in: *arstechnica.com*, July 8.

schools

Howell, Michigan

A federal district judge has ruled that a high school teacher violated the free speech rights of a Michigan student by removing him from class for expressing views that he didn’t “accept gays” because of his Roman Catholic faith.

U.S. District Court Judge Patrick J. Duggan of Detroit awarded nominal damages of \$1 to Daniel Glowacki, who was a junior at Howell High School in the fall of 2010 when the events at issue occurred.

In a case that “highlights a tension that exists between public school anti-bullying policies and the First Amendment’s guarantee of free speech,” as he put it, the judge further held that the Howell Public School District was not liable in the case because it removed any record of discipline from the student’s file and has speech and anti-bullying policies that respect students’ First Amendment rights.

The June 19 decision in *Glowacki v. Howell Public School District* is recommended reading for anyone in the education and legal communities grappling with issues of gay rights, religious speech by students, and bullying. “Public schools must strive to provide a safe atmosphere conducive to learning for all students while fostering an environment that tolerates the expression of different viewpoints, even if unpopular, so as to equip students with the tools necessary for participation in a democratic society,” Judge Duggan said.

According to court papers, an anti-gay-bullying lesson in teacher Jay McDowell’s economics class led to an exchange with Glowacki in which the student said he had difficulty accepting gays because of his Catholic faith. The teacher became emotional, according to deposition testimony cited by the judge, and compared the student’s statement to saying, “I don’t accept blacks.”

When Glowacki stood by his views, the teacher asked him to leave the class and wrote up a referral for unacceptable behavior. When asked about the move by the remaining students, McDowell said a student could not voice an opinion that “creates an uncomfortable learning environment for another student,” according to court papers.

As noted above, Glowacki faced no other discipline from school administrators, and he transferred to another economics class. McDowell, meanwhile, was reprimanded by the district.

Glowacki and his mother sued the teacher and the school district with the help of the Thomas More Law Center, an Ann Arbor, Michigan-based conservative legal organization, which sought only the nominal damages. The American Civil Liberties Union and its Michigan affiliate joined the case on the student’s side, as well.

Judge Duggan held that Glowacki’s comments in class were protected speech that were not disruptive and did not infringe on the rights of other students. “The court does not believe that Daniel’s comments, addressed as they were to McDowell during a classroom discussion initiated by McDowell, impinged upon the rights of any individual student,” the judge said.

Judge Duggan further held that the teacher violated the student’s First Amendment rights by engaging in viewpoint discrimination, and that he was not entitled to qualified immunity. “As a reasonable teacher, McDowell should have known that Daniel’s protected speech could not serve as the basis for discipline or as the basis for believing a school district policy was violated,” the judge said.

Despite winning its claims only against the teacher and not the school district, the Thomas More Law Center praised the decision in a news release. “The purpose of our lawsuit was to protect students’ constitutional rights to free speech, defend religious liberty, and stop public schools from becoming indoctrination centers for the homosexual agenda,” Richard Thompson, the center’s president and chief counsel, said in the release.

An area radio station, WHMI, reported on its website that McDowell said that with the judge’s ruling it was “time to move on and focus on the business of teaching students.” Reported in: *Education Week*, June 20.

Brooklyn, New York

The day after a sixth grader from Harlem drowned in the Atlantic Ocean on a class outing, a fifth-grade teacher in Brooklyn posted some rather impolitic comments about her own students on Facebook.

“After today, I am thinking the beach sounds like a wonderful idea for my 5th graders?” the teacher, Christine Rubino, wrote in 2010. “I HATE THEIR GUTS! They are all the devils spawn!” She added, concerning one student, “I wld not throw a life jacket in for a million.”

Rubino compounded her problems by trying to cover up and deny the online outburst, a hearing officer found, and the Department of Education fired her.

But a state judge ruled that while Rubino’s remarks were “offensive” and “repulsive,” she should not have been terminated. And on May 8 a state appellate panel, upholding the lower court, ruled that Rubino, a 15-year veteran with an otherwise unblemished disciplinary record, is entitled to keep her job.

“Although the comments were clearly inappropriate,” wrote the four-judge panel of the First Department Appellate Division, “it is apparent that petitioner’s purpose was to vent her frustration only to her online friends after a difficult day with her own students.”

Bryan Glass, a lawyer for Rubino, said he was “very grateful” for “a very humane decision.”

Rubino, a teacher at Public School 203 in the Flatlands neighborhood, is hardly getting off scot-free. After her termination was thrown out, she was given a two-year suspension without pay. She has already appealed the suspension, and lost. But it began in June 2011, meaning that it has ended. “Regarding whether Rubino will return in June,” an Education Department spokeswoman wrote, “we are reviewing our options.”

The city’s Law Department said it planned to appeal to the State Court of Appeals. “Ms. Rubino has been ordered reinstated, despite her callous remarks about the death of a sixth-grader and demeaning statements about her own students,” the department said in a statement. “Such actions would cause any parent to reasonably object to having a child in her class.” Reported in: *New York Times*, May 8.

Easton, Pennsylvania

Schools cannot censor student speech about political or social issues just because it “has the potential to offend,” a federal circuit court said August 5.

In the *en banc* opinion issued by the U.S. Court of Appeals for the Third Circuit, a 9-5 majority found that the “I ♥ boobies! (KEEP A BREAST)” breast cancer awareness bracelets worn by two Pennsylvania middle school students were not “lewd” and that the Easton Area School District’s ban on the bracelets violated the students’ First Amendment right to freedom of speech.

The opinion, upholding a 2011 district court’s preliminary injunction to halt the ban, offered a broad defense of student political and social speech, including the bracelets, in a category of “speech of genuine social value.” Schools must be careful when balancing “a student’s right to free speech and a school’s need to control its educational environment,” the court said.

“Schools cannot avoid teaching our citizens-in-training how to appropriately navigate the ‘marketplace of ideas,’” wrote Circuit Court Judge D. Brooks Smith in the majority opinion. “Just because letting in one idea might invite even more difficult judgment calls about other ideas cannot justify suppressing speech of genuine social value.”

That’s an important precedent to establish so that students feel comfortable expressing their opinions, said Mary Catherine Roper, an attorney with the American Civil Liberties Union of Pennsylvania, who represented the two students.

“These girls were not saying anything sexual,” Roper said. “They had no intention of saying anything sexual. The idea that a school could ban speech about such an important health issue simply because someone could misinterpret something in some way, you’d have school administrators able to ban just about anything. ... That just cannot be the standard that governs when our students are talking about important issues.”

As expected, the court’s opinion relied heavily on its interpretation of the case in the context of the Supreme Court’s decisions in *Bethel School District v. Fraser*, *Morse v. Frederick* and to a lesser extent, *Tinker v. Des Moines Independent Community School District*.

The *Fraser* decision allows schools to restrict “vulgar, lewd, profane, or plainly offensive speech,” while *Morse* allows speech that promotes illegal drug use to be restricted. Under *Tinker*, schools can impose restrictions only when administrators have a reasonable fear that the speech will “substantially” disrupt school operations.

But the appeals court said neither *Fraser* nor *Tinker* supports the Easton Area School District’s “boobies” bracelet ban that was put into place in the fall of 2010. The ban came about after teachers saw students wearing the bracelets; during Breast Cancer Awareness Month, administrators instructed students that they were no longer allowed.

B.H. and K.M., the two girls who filed the complaint, wore the bracelets in defiance of the ban and were given in-school suspension for one and a half days.

In oral arguments and briefs filed with the court, the school justified its bracelet ban and the girls’ punishment, arguing that the bracelets “conveyed a sexual double entendre” that could be both “harmful and confusing” to middle school students.

The court rejected the argument, finding that the “I ♥ boobies!” bracelets didn’t meet the standard for restriction under *Fraser*.

“The slogan bears no resemblance to *Fraser*’s ‘pervasive sexual innuendo’ that was ‘plainly offensive to both teachers and students,’” Smith wrote, noting that B.H. and K.M. wore the bracelets for nearly two months before administrators decided they were inappropriate.

During those two months, no significant disruptions occurred, leading the court to conclude that the ban was not justified under *Tinker*, either.

The appeals court’s split centered on how to interpret the Supreme Court’s most recent case about student First Amendment rights, the *Morse* ruling from 2007. Justices Samuel Alito and Anthony Kennedy issued a concurring opinion in *Morse*, the so-called “Bong hits 4 Jesus” case, in which the Court found no First Amendment violation in punishing a student for a pro-drug banner at a school event. Alito and Kennedy wrote that they could support restrictions on student speech about drug use only when the speech could not “plausibly be interpreted as commenting on any political or social issue.”

In the Third Circuit opinion the majority relied on Alito and Kennedy as the “controlling” opinion in the case, while the five-judge minority said Chief Justice John Roberts’ majority opinion in the case was the prevailing legal standard. Roberts’ opinion offered no exceptions for speech about political or social issues.

As a result of the majority’s interpretation of the *Morse* and *Fraser* cases, public schools may ban speech that is “plainly” lewd and cannot be interpreted as having a political or social message. But if there is even an ambiguity that the message might address political or social issues, then the speech must be allowed.

The ruling was somewhat unusual in that it was the result of an *en banc* hearing, meaning the case went before all the judges in the Third Circuit. It was originally argued before three appellate judges in April 2012; the Student Press Law Center filed a “friend-of-the-court” brief then in favor of the students. A few months later, the court rescheduled arguments the case, this time before the full panel of judges. The three judges who heard the original argument all signed the court’s dissenting opinion.

The ruling is binding in the Third Circuit, which includes Pennsylvania, New Jersey and Delaware. Reported in: splc.org, August 5.

colleges and universities

Louisville, Kentucky

In an anticlimactic finish to a case in which a nursing student was expelled for posting an unflattering description of a birth on her Myspace page, the United States Court of Appeals for the Sixth Circuit held in an unpublished opinion that the University of Louisville's Nursing School did not violate student Nina Yoder's First Amendment rights. The events in this case date back to 2009, when Yoder posted a long description of the birth of a baby that did not exactly follow the traditional "miracle of birth" storyline. Instead, Yoder gave a graphic description of the mother's labor and described the moment of birth as:

"The momma's family is sitting in the corner, shaking all over, with the two younger brothers of the baby, the in-laws, and the bitching spouse. At last my girl gave one big push, and immediately out came a wrinkly bluish creature, all Picasso-like and weird, ugly as hell, covered in god knows what, screeching and waving its tentacles in the air."

The Nursing School quickly expelled her for violating the school's honor code and patient confidentiality agreements and for acting in an unprofessional manner. Yoder sued the school in federal court, alleging a violation of her First Amendment rights. In August 2009, the United States District Court for the Western District of Kentucky allowed Yoder to return to school. In 2011, the Sixth Circuit reversed that decision because it did not consider the First Amendment issue, but rather came up with its own legal reasoning instead of deciding the case based on what the parties had argued. When the district court considered the case again, it dismissed Yoder's constitutional claims, including her First Amendment argument, because the defendants enjoyed sovereign and qualified immunity. She appealed and the Sixth Circuit has now written the final chapter in this case.

The Sixth Circuit's decision avoids analyzing the First Amendment claims as much as possible. The court affirmed the dismissal of some of Yoder's claims for declaratory and injunctive relief on mootness grounds. (Yoder has received her degree.) Otherwise, it decided the case on "qualified immunity" grounds. The doctrine of qualified immunity shields public officials from personal liability for violating a constitutional right as long as the right in question was not "clearly established" at the time of the alleged wrongdoing, such that a reasonable official would have known that it was a violation.

The decision does not consider whether Yoder had a First Amendment right to post her description on a personal Myspace page, but focuses on the fact that such a right was not well-established in 2009. In short, the Sixth Circuit panel punted.

The court found that Yoder's violation of the confidentiality agreement was more like earning a bad grade—an indication of a lack of aptitude—than misconduct, namely

breaking the rules. Although the line may be a bit blurry in the case of a professional school, the reasoning in the opinion is quite a stretch: "the Honor Code, Confidentiality Agreement, and Consent Form was mandated as a condition of her enrollment in the upper division ... [so that] the required conduct was a component of coursework, not part of a general student code of conduct." Reported in: *thefire.org*, June 10.

publishing

New York, New York

Google scored a victory in the long-running lawsuit over its book-scanning project July 1 as a federal appeals court ruled that it was "premature" that the authors suing Google had been certified as a class.

In May 2012, Judge Denny Chin of U.S. District Court in Manhattan ruled that the authors could sue as a group, saying that class action was "the superior method for resolving this litigation."

"Requiring this case to be litigated on an individual basis would risk disparate results in nearly identical suits and exponentially increase the cost of litigation," he wrote.

In a five-page ruling the United States Court of Appeals for the Second Circuit rejected that decision and said that the lower court must first consider the "fair use" issues raised by the case.

"On the particular facts of this case, we conclude that class certification was premature in the absence of a determination by the district court of the merits of Google's 'fair use' defense," the panel of judges said.

The case began in 2005, when the Authors Guild sued Google over its book-scanning project, saying that the widespread scanning violated copyright. A \$125 million legal settlement was reached between the parties, but Judge Chin rejected it in 2011.

Matt Kallman, a spokesman for Google, said in an e-mail: "We are delighted by the court's decision. The investment we have made in Google Books benefits readers and writers alike, helping unlock the great pool of knowledge contained in millions of books." Reported in: *New York Times*, July 1.

freedom of the press

Washington, D.C.

In a major ruling on press freedoms, a divided federal appeals court ruled July 19 that James Risen, an author and a reporter for *The New York Times*, must testify in the criminal trial of a former Central Intelligence Agency official charged with providing him with classified information.

In a 118-page set of opinions, two members of a three-judge panel for the United States Court of Appeals for

the Fourth Circuit, in Richmond, Virginia, ruled that the First Amendment does not protect reporters who receive unauthorized leaks from being forced to testify against the people suspected of leaking to them. A district court judge who had ruled in Risen's case had said that it did.

"Clearly, Risen's direct, firsthand account of the criminal conduct indicted by the grand jury cannot be obtained by alternative means, as Risen is without dispute the only witness who can offer this critical testimony," wrote Chief Judge William Byrd Traxler Jr., who was joined by Judge Albert Diaz.

Risen has vowed to go to prison rather than testify about his sources and to carry any appeal as far as the Supreme Court. But some legal specialists said an appeal to the full appeals court was a likely first step. Risen's lawyer, Joel Kurtzberg, wrote in an e-mail: "We are disappointed by and disagree with the court's decision. We are currently evaluating our next steps."

Judge Roger Gregory, the third member of the panel, filed a vigorous dissent, portraying his colleagues' decision as "sad" and a serious threat to investigative journalism.

"Under the majority's articulation of the reporter's privilege, or lack thereof, absent a showing of bad faith by the government, a reporter can always be compelled against her will to reveal her confidential sources in a criminal trial," he wrote. "The majority exalts the interests of the government while unduly trampling those of the press, and in doing so, severely impinges on the press and the free flow of information in our society."

The ruling establishes a precedent that applies only to the Fourth Circuit, but that circuit includes Maryland and Virginia, where most national security agencies like the Pentagon and the Central Intelligence Agency are. As a result, if it stands, it could have a significant impact on investigative journalism about national security matters.

It has long been unclear whether the Constitution protects reporters from being forced to testify against their sources in criminal trials. The principal Supreme Court precedent in that area, which is more than forty years old, concerns grand jury investigations, not trials, and many legal scholars consider its reasoning to be ambiguous.

"We agree with the decision," said Peter Carr, a Justice Department spokesman. "We are examining the next steps in the prosecution of this case."

The ruling was awkwardly timed for the Obama administration. Attorney General Eric H. Holder Jr. has portrayed himself as trying to rebalance the department's approach to leak investigations in response to the furor over its aggressive investigative tactics, like subpoenaing Associated Press reporters' phone records and portraying a Fox News reporter as a criminal conspirator in order to obtain a warrant for his e-mails.

Holder earlier announced new guidelines for leak investigations that significantly tightened the circumstances in which reporters' records could be obtained. He also

reiterated the Obama administration's proposal to revive legislation to create a federal media shield law that in some cases would allow judges to quash subpoenas for reporters' testimony, as many states have.

"It's very disappointing that as we are making such good progress with the attorney general's office and with Congress, in getting them to recognize the importance of a reporter's privilege, the Fourth Circuit has taken such a big step backwards," said Gregg Leslie, the legal defense director for the Reporters Committee for Freedom of the Press.

Risen is a national security reporter for *The New York Times*, but the case revolves around material he published in his 2006 book, *State of War*, not in the newspaper. A chapter in the book recounted efforts by the CIA in the Clinton administration to trick Iranian scientists by having a Russian defector give them blueprints for a nuclear triggering device that had been altered with an error. The chapter portrays the operation as reckless and botched in a way that could have helped the Iranians gain accurate information.

In December 2010, a former CIA officer, Jeffrey Sterling, was accused of being Risen's source and indicted on Espionage Act charges. His is one of seven leak-related cases brought so far by the Obama administration, compared with three under all previous presidents combined.

The appeals court's ruling, which came more than a year after it heard oral arguments in the case, reversed a decision in 2011 by Judge Leonie M. Brinkema of U.S. District Court in Alexandria, Virginia, who had sharply limited what prosecutors could ask Risen about his sources. She had written that he was protected by a limited "reporter's privilege" under the First Amendment, but the Obama administration argued that such a reporter's privilege did not exist, and appealed.

A coalition of more than two dozen media organizations, including *The New York Times* and Fox News, filed a friend-of-the-court brief in the case arguing that a qualified reporter's privilege—allowing judges to protect reporters from testifying under some circumstances—was crucial for the "dissemination of news and information to the public."

Judges Traxler and Diaz agreed with the Obama administration. "There is no First Amendment testimonial privilege, absolute or qualified, that protects a reporter from being compelled to testify by the prosecution or the defense in criminal proceedings about criminal conduct that the reporter personally witnessed or participated in, absent a showing of bad faith, harassment, or other such non-legitimate motive, even though the reporter promised confidentiality to his source," Judge Traxler wrote.

The majority based its ruling on a 1972 Supreme Court decision, *Branzburg v. Hayes*, which rejected an effort by a reporter to avoid testifying before a grand jury. Risen's lawyers had argued that the 5-4 ruling was ambiguous and left room open for Judge Brinkema to shield him from testifying in the criminal trial. In his dissent, Judge Gregory said that he would recognize a qualified reporter's privilege

in criminal cases. He also argued that prosecutors had enough other evidence to make their case without Risen's testimony.

"Whatever the limits of who may claim reporter's privilege, it is clear that Risen—a full-time reporter for a national news publication, *The New York Times*—falls into the category of people who should be eligible to invoke the privilege," he wrote.

Judge Traxler was appointed by President Bill Clinton and Judge Diaz by President Obama. Judge Gregory was given a recess appointment by Clinton, and then renominated by President George W. Bush.

Over the past three decades, nearly two dozen journalists have been jailed in the United States for refusing to testify or disclose sources or other types of reporting information, according to a list maintained by Reporters Committee for Freedom of the Press.

In 2005, a *New York Times* reporter, Judith Miller, was jailed for 85 days for refusing to testify about sources in the investigation into who leaked the identity of a CIA officer, Valerie Plame Wilson. She was released after her source, I. Lewis Libby, Vice President Dick Cheney's chief of staff, released her from the confidentiality agreement, and she testified before a grand jury. Reported in: *New York Times*, July 19.

secrecy and surveillance

Washington, D.C.

The U.S. government can no longer refuse to litigate wiretapping cases on the grounds that they would expose state secrets and undermine national security, a federal court has ruled.

The ruling concerned two cases in a series of many tied to claims that the federal government has been working with telecommunications companies such as AT&T to collect massive amounts of data about U.S. residents without a search warrant. Plaintiffs have said such searches were instituted following the September 11, 2001, terror attacks in violation of privacy rights.

Similar privacy concerns have entered into the national discussion following recent leaks involving a government surveillance program known as Prism and a separate telecom metadata collection program.

Last year, the U.S. Supreme Court refused to overturn legal immunity for telecom carriers that allegedly participated in a National Security Agency surveillance program over the past decade.

The July 8 decision, handed down by the U.S. District Court for the Northern District of California, considered the defendants' argument that plaintiffs' claims should be dismissed on the grounds of the state secrets privilege, which permits the government to bar the disclosure of information if it presents a "reasonable danger" of exposing military

matters that should not be divulged. The defendants in the case include the NSA as well as Obama and Bush administration officials. The plaintiffs are represented by the Electronic Frontier Foundation.

The ruling rejected the state-secrets argument. "Given the multiple public disclosures of information regarding the surveillance program, the court does not find that the very subject matter of the suits constitutes a state secret," Judge Jeffrey White wrote in the ruling.

Although there are elements of its surveillance programs that the government has not revealed, the voluntary disclosures made by various officials since 2005 have established that the government's terrorist surveillance program, the types of persons it has targeted, and even some of its procedures, are not state secrets, the ruling said.

"The court does not find dismissal appropriate based on the subject matter of the suits being a state secret," White wrote. However, there would be significant evidence that might be properly excluded should the case proceed, the judge said.

"If the state secrets defense applies to bar disclosure altogether of much of the evidence sought in this suit, plaintiffs may neither be able to establish standing to sue nor state a *prima facie* case," a case in which there is sufficient evidence to enable a verdict, the ruling said.

Cindy Cohn, legal director and general counsel for the EFF, called the ruling a tremendous victory and a courageous decision by the court, which moves the group's efforts one step closer toward establishing the government surveillance programs as unconstitutional under the First and Fourth Amendments.

The court is requiring that the parties "submit further briefing on the course of this litigation going forward." Reported in: *PC World*, July 8.

"sexting"

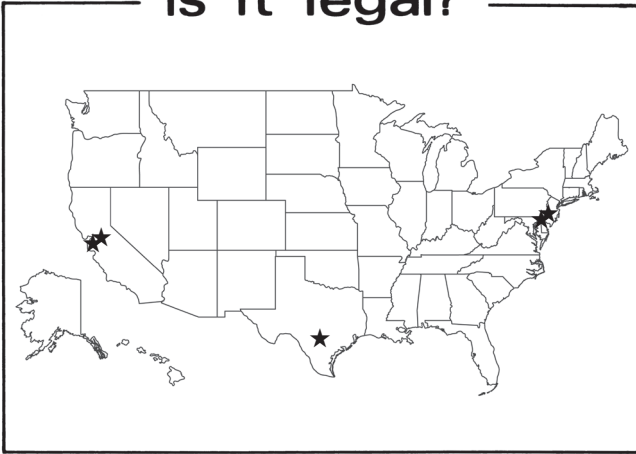
Philadelphia, Pennsylvania

On July 18, a Philadelphia-based federal judge issued an order rejecting a First Amendment challenge to the constitutionality of a pair of laws that require creators of sexually explicit media to maintain records certifying that those depicted in their works are 18 or older.

These regulations were originally passed by Congress to combat child pornography. Among the arguments raised by the challengers—who included both porn producers and sex educators—was that the plain language of these statutory record-keeping requirements unfairly exposes ordinary consenting adults to criminal liability if they fail to maintain meticulous records. The challengers alleged that risk occurs every time adults use a cell phone to send a sexually explicit image or share homemade sexual images via a date-facilitating website or social network.

(continued on page 209)

is it legal?



secrecy and surveillance

Washington, D.C.

On August 9, President Obama sought to take control of the roiling debate over the National Security Agency's surveillance practices, releasing a more detailed legal justification for domestic spying and calling for more openness and scrutiny of the NSA's programs to reassure a skeptical public that its privacy is not being violated.

"It's right to ask questions about surveillance, particularly as technology is reshaping every aspect of our lives," Obama said, adding: "It's not enough for me, as president, to have confidence in these programs. The American people need to have confidence in them as well."

But at a time when leaks by the former NSA contractor Edward J. Snowden have exposed the agency's expansive spying both inside the United States and abroad to an unprecedented degree of scrutiny, Obama showed no inclination to curtail secret surveillance efforts. Rather, he conceded only a need for greater openness and safeguards to make the public "comfortable" with them.

In meeting threats to the country, Obama said, "we have to strike the right balance between protecting our security and preserving our freedoms." And while he said that the programs were valuable and that he was confident they had not been abused, he acknowledged that people "may want to jiggle slightly" that balance.

Obama made his remarks at a wide-ranging news conference on the eve of his departure for a week's vacation. He responded to questions on a variety of issues, but he began with a lengthy statement about surveillance, and that was the focus of the nearly hourlong conference.

Critics of the electronic spying brought to light by Snowden's leaks said the president's approach was

insufficient. Anthony D. Romero, the executive director of the American Civil Liberties Union, said that a program that collects records of every domestic phone call—which Obama made clear he intends to keep—must be shut down.

"What's clear is that these surveillance programs have gone much further than the president or Congress have ever admitted," Romero said. "These initial recommendations from Obama today, albeit welcome, are too little too late. They are not sufficient to address serious concerns about possible violations of the law and about dragnet surveillance."

A spokesman for Speaker John A. Boehner, Republican of Ohio, urged Obama not to let such criticism undermine the NSA's fundamental capabilities. "Transparency is important, but we expect the White House to insist that no reform will compromise the operational integrity of the program," said the spokesman, Brendan Buck. "That must be the president's red line, and he must enforce it. Our priority should continue to be saving American lives, not saving face."

A clear theme of Obama's remarks was that he believed that the public's understanding of the surveillance programs had been distorted. He portrayed some of Snowden's leaks as having been reported in "the most sensationalized manner possible" and parceled out to "maximize attention" in "drips and in drabs, sometimes coming out sideways." The result has been misimpressions not merely among the American public, he said, but around the world—a reference to the widespread international criticism of the United States over reports of its surveillance policies.

"If you are the ordinary person and you start seeing a bunch of headlines saying 'U.S. Big Brother looking down on you, collecting telephone records, etc.,' well, understandably people would be concerned," he said, while also addressing some of his reassurances to those abroad.

"To others around the world, I want to make clear once again that America is not interested in spying on ordinary people," he said. "Our intelligence is focused above all on finding the information that's necessary to protect our people and, in many cases, protect our allies. It's true we have significant capabilities. What's also true is we show a restraint that many governments around the world don't even think to do."

In an effort to rebuild public trust, Obama said he wanted to work with Congress to modify the phone log program, but in what he said would be an "appropriate" way. He listed as examples of those steps establishing more oversight and auditing how the database is used.

The president also threw his support behind a proposal to change the procedures of the secret court that approves electronic spying under the Foreign Intelligence Surveillance Act, saying an adversarial lawyer should make arguments opposing the Justice Department when the court is considering whether to approve broad surveillance programs.

The administration also released a 22-page unclassified

“white paper” explaining in greater detail why the government believes that its bulk collection of domestic phone logs is lawful. At the same time, the NSA released a seven-page paper outlining its role and authorities. The agency is creating a full-time civil liberties and privacy officer, Obama said, and it will open a Web site designed to explain itself better to the public.

“We can and must be more transparent,” Obama said.

In addition, Obama announced the creation of a task force that will include outside intelligence specialists and civil liberties advocates to advise the government about how to balance security and privacy as improving computer technology makes it possible to gather ever more information about people’s private lives.

The news conference also dwelled on Snowden’s obtaining temporary refugee status in Russia, and the cooling relationship with the Putin government over that and several other issues, including the conflict in Syria and Russia’s crackdown on gay rights. Earlier in the week, Obama canceled a planned summit meeting with President Putin in Moscow.

Asked whether the steps on surveillance he was taking amounted to a vindication of Snowden’s leaks, Obama rejected that notion. He said that Snowden should have gone to the Congressional intelligence committees with any concerns he had about surveillance, rather than “putting at risk our national security and some very vital ways that we are able to get intelligence that we need to secure the country.”

“I don’t think Mr. Snowden was a patriot,” Obama said. Reported in: *New York Times*, August 9.

Washington, D.C.

In the wake of newly published orders from the Foreign Intelligence Surveillance Court (FISC), two American legislators have introduced a bill that would require the government to declassify FISC opinions that describe how the secret court has interpreted Section 215 of the USA PATRIOT Act and Section 702 of the Foreign Intelligence Surveillance Act (FISA).

Those two parts of federal law are the official legal justification as to why the government has the authority to engage in programs like the one the National Security Agency (NSA) has with telecom providers, as well as other related covert digital surveillance often conducted by the spy agency. The new bill in the house complements a similar bill introduced in the Senate the previous week.

“In order to have an informed public debate on the merits of these programs, it is important for the American people to know how such programs have been authorized, their limits and their scope,” said Rep. Adam Schiff (D-CA) in a statement.

“Particularly now that the existence of these programs has been acknowledged, I believe there is much more that

can be shared with the public about their legal basis,” Schiff said. “It is my hope that this legislation will increase transparency and inform the national debate about the surveillance authorities provided to the Intelligence Community. I also believe that requiring additional disclosure would provide another valuable check on any potential expansion of surveillance under these authorities, whether by this or any future Administration.”

Established under the Foreign Intelligence Surveillance Act of 1978, the court’s mandate is to approve special surveillance warrants (FISA warrants) against suspected foreign agents, to be used by American federal agencies, typically the NSA or the FBI. One of eleven judges who are tapped from existing posts in the federal circuit can then grant that warrant’s approval. In the court’s history, warrants (and related orders) are approved more than 99 percent of the time. The court’s publicly accessible docket is pretty short—in fact, the website didn’t even exist until recently.

“I think one has to be disturbed to learn as we recently have that more than 1,800 applications and [around] more than 1,800 approvals have been made by the court,” Gary Hart, a former Colorado senator who sat on the Church Committee, told Ars. That select senatorial committee was created in the 1970s, and its recommendations paved the way for FISA and FISC.

“I would be a little more comfortable if there were more rejections,” he said. “The glass half-full is that properly trained and qualified judges are hearing persuasive cases. But as a lawyer, this is not a typical judicial proceeding that we’re familiar with, because there’s no other side. Unlike virtually everything else [in the legal system,] it’s not adversarial. The judge hears [the government’s case,] but there’s nobody else to argue the other side. If you’re a constitutionalist as I am, that’s disturbing.” Reported in: *arstechnica.com*, June 20.

Mountain View, California

On June 18, Google filed a motion with the secret Foreign Intelligence Surveillance Court, asking permission to publish data on national security requests that were made to it and authorized by the court.

The motion was the company’s latest move to control the public relations crisis that resulted from revelations of government Internet surveillance. It marked an escalation of Google’s efforts to publish the data. The previous week the company sent a letter to the director of the FBI and the director of national intelligence, asking for the same thing.

By law, recipients of national security requests are not allowed to acknowledge their existence. But with the permission of the government, Facebook, Yahoo, Microsoft and Apple have published aggregate numbers of national security and criminal requests, including those authorized by the Foreign Intelligence Surveillance Act. Google has not, because it said that would be less transparent than what

it had already published. Its transparency report has since 2010 broken out requests by type, and if it agreed to the same terms the other companies did, it would not be able to publish the report that way in the future.

In the motion, Google argued that it had a First Amendment right to publish a range of the total number of requests and the number of users or accounts they cover.

Google said that its executives had responded to allegations—that it cooperated with the government in Internet surveillance—as best they could, given the government’s restraints on discussing them. But the company said that it wanted to do more for the sake of its reputation, business and users, and for the sake of public debate.

“Google’s reputation and business has been harmed by the false or misleading reports in the media, and Google’s users are concerned by the allegations,” the motion said. “Google must respond to such claims with more than generalities.”

The tech companies have been pressing to be able to publish the number of government requests largely to prove that the requests cover a tiny fraction of users. Though the other companies said they were also pushing the government for permission to publish more detailed data, they said the aggregate numbers were useful to control speculation by setting a ceiling on the number of requests.

Other tech companies affected by the government’s surveillance program, called Prism, have considered going to the secret court, an option that is still on the table, according to two people briefed on the discussions. So far, the companies have been individually negotiating with the government instead of acting in concert.

Still, even if they are allowed to publish more detailed numbers, it would leave many questions unanswered, including details of how Prism works. Also, the number of people affected by FISA requests could be much larger than the number of requests, because once the government makes a broad request, it can add individuals and additional search queries for a year.

Google’s motion also revealed that two of its top lawyers, Kent Walker and Richard Salgado, have security clearance, which FISA requires for handling classified legal orders and materials. It was filed on behalf of the company by Albert Gidari, a partner at the law firm Perkins Coie who has earned a reputation in tech and legal circles as the go-to man on surveillance law. Reported in: *New York Times*, June 18.

schools

Lodi, California

The Student Press Law Center and the American Civil Liberties Union of Northern California asked a California school district August 12 to immediately cease enforcing a “draconian and constitutionally infirm” regulation that

requires any student taking part in sports or other extracurricular activities to sign a “contract” agreeing to be punished for any online speech that the school district deems “inappropriate.”

In a letter to the school board and superintendent of the Lodi Unified School District the SPLC and ACLU-NC cautioned that continuing to force students to sign the policy will expose the school district and its employees to legal action for violating the First Amendment, the California Constitution, and California statutes that protect the free-expression rights of students both on and off campus.

The letter was sent on behalf of the SPLC and ACLU-NC by San Francisco attorney Thomas R. Burke, a partner with Davis Wright Tremaine LLP, one of the nation’s preeminent law firms representing the interests of news-media clients in California and across the country. Burke and his firm are members of the SPLC’s volunteer Attorney Referral Network, providing legal assistance to student journalists at no charge.

Last spring at the end of the 2013 school year, the Lodi school district adopted a new regulation, “Social Networking by Student-Athletes and Co-Curricular Participants,” that all students and their parents must sign as a requirement to take part in sports or clubs. Under the agreement, students agree to submit to the school’s disciplinary authority for what they say on social networking sites, even off-campus on their personal time.

Among the types of speech the policy purports to ban are: (1) speech making references to violence or to alcohol or drug use, (2) speech indicating knowledge of cyberbullying, (3) speech that is “demeaning” about any person, (4) “liking” or “retweeting” a social media post that contains prohibited speech, and (5) “subtweeting,” or posting a comment on Twitter that refers to a person who is not named.

Students at Lodi’s Bear Creek High School have led grassroots opposition to the policy, and spoke August 6 at a meeting of the district’s Board of Education asking that the policy be revamped or rescinded. Board members say the policy may return for consideration of revisions at the board’s next meeting August 20.

The SPLC/ACLU letter cautioned the school district that its “incredibly broad” list of prohibited speech “fails to withstand the most basic First Amendment scrutiny.” Among the policy’s flaws, the letter explains, are failure to differentiate between speech that “refers to” violence versus speech that actually threatens or solicits others to commit violence, and failure to allow leeway for “demeaning” speech addressing issues of public concern, such as criticism of celebrities or political figures. The letter points out that a federal appeals court with jurisdiction over California has already ruled (in the 2006 case of *Pinard v. Clatskanie School District*) that athletes may not be denied participation in school sports as punishment for speaking out in a non-disruptive way (in that case, petitioning for the removal of an abusive coach).

“Online bullying is a genuine concern, but this policy goes so greatly beyond any speech that could be considered bullying that it would leave students entirely at the mercy of subjective, and potentially retaliatory, punishment for speech that crosses some mysterious line of ‘inappropriateness,’” said attorney Frank D. LoMonte, executive director of the Student Press Law Center.

“We’ve seen far too many instances of school administrators intimidating student whistleblowers, journalists and commentators who are trying to inform the public about the shortcomings of schools. The threat of being kicked out of extracurricular activities, which might make the difference between college admission and rejection, will cause students to censor themselves for fear that their criticism of school policies will be labeled ‘inappropriate,’” LoMonte said. Reported in: splc.org, August 12.

church and state

Trenton, New Jersey

The American Civil Liberties Union filed a “last resort” lawsuit in New Jersey state court June 25 seeking to block two private religious colleges, including an ultra-Orthodox, all-male rabbinical school, from receiving a total of \$11.3 million in state money.

The lawsuit argues that the court should revoke public construction funds granted to Beth Medrash Govoha and Princeton Theological Seminary because the New Jersey Constitution forbids the use of tax dollars for religious institutions. The institutions prepare students to become rabbis and ministers.

“Public money shouldn’t be used to fund yeshivas and seminaries,” Udi Ofer, executive director of the ACLU of New Jersey, said in an interview. The institutions “have every right to provide this education,” he said, “but they shouldn’t do so on the public’s dime.”

The civil-liberties group also argues that Beth Medrash Govoha should not receive the \$10.6 million it was awarded because the institution allegedly discriminates based on sex. The rabbinical college, in Lakewood, N.J., has an enrollment of about 6,600. It plans to use the money to build a library and add academic space to an existing building, according to the lawsuit and college officials.

Princeton Theological Seminary, which is affiliated with the Presbyterian Church, plans to use its \$645,313 in state funds for technology upgrades and new conference rooms, according to the lawsuit. Michelle Roemer Schoen, a spokeswoman for the seminary, declined to comment on the ACLU’s complaint or the state money.

The lawsuit was the latest effort by civil-liberties groups and lawmakers to stop the two religious institutions from getting part of the \$1.3 billion that Gov. Chris Christie’s administration allocated to colleges and universities in

April from a pool of funds for higher-education construction projects. Beth Medrash Govoha received the second-largest amount of any private institution, after Seton Hall University.

Ofer said the ACLU had filed its complaint as a last resort. “We were hopeful since late April that the money would be rejected and there’d be a new proposal by the Christie administration, but we’ve been disappointed,” Ofer said.

New Jersey voters approved a \$750 million bond issue for higher education last November to make more money available for private and public colleges. The bill outlining the higher-education bond last summer originally excluded religious schools from receiving public dollars. But that provision was taken out of the law under an amendment sponsored by State Sen. Stephen M. Sweeney, a Democrat.

The speaker of the General Assembly, Sheila Y. Oliver, a Democrat, is among those who oppose state money for the religious institutions. She and civil-liberties groups have complained that Beth Medrash Govoha had used political connections to steer funds its way. The institution hired a lobbyist to help win the money, and its leader traveled with the governor to Israel in April 2012.

Since the grants were awarded, Governor Christie and Speaker Oliver have sparred. Governor Christie, a Republican, called the opposition hypocritical because his critics also supported the state’s Tuition Aid Grants program, which Beth Medrash Govoha has secured for over a decade.

State officials, including Governor Christie, have also refused to make public the applications that colleges submitted for the construction grants, causing further outcry.

Moshe Gleiberman, vice president for administration at Beth Medrash Govoha, said the money would be used “solely” for academic purposes. He added that the college’s graduates went on to succeed in business, not just religion. He wrote in an e-mail that graduates contribute to a wide range of fields that help the state’s economy, including starting companies in food manufacturing, green technologies, and transportation.

Ofer said he believed the ACLU had an easy case because the New Jersey Constitution states that no person shall “be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry.”

New Jersey’s laws on the separation of church and state are more detailed than the U.S. Constitution’s, said Robert F. Williams, a professor at Rutgers University’s School of Law in Camden, N.J., who wrote a book on the New Jersey Constitution. But, he said, “the New Jersey Supreme Court tends to interpret the provisions pretty much the way the federal First Amendment is interpreted, even though it reads differently.”

In other states, judges have sided with religious colleges. In 2007 the California Supreme Court ruled that

“pervasively sectarian” institutions could issue government-backed bonds to build facilities that house secular classes or study space.

The New Jersey case is different, though, said Ronald K. Chen, acting dean of the Rutgers School of Law in Newark, N.J. Chen, who sits on the legal committee of the ACLU’s New Jersey chapter, said the court should toss out the money for the religious colleges because the planned buildings will house religious training, as that is the colleges’ main function.

“New Jersey gives money to religious colleges, like Seton Hall’s law school, but that’s money for secular programs. Giving money for Seton Hall to build a new math building, that’s one thing,” he said. “But this is to train students for the clergy. This is a direct assistance to the religious function of the institution.” Reported in: *Chronicle of Higher Education* online, June 25.

broadcasting

Washington, D.C.

Opponents of easing restrictions on cursing and “non-sexual nudity” over public airwaves have flooded the Federal Communications Commission with more than 100,000 public comments.

The FCC in April asked for feedback on a plan to focus its enforcement efforts on the most egregious cases of indecency. If adopted, the regulations would be a departure from more aggressive George W. Bush-era policies of penalizing even isolated uses of expletives on broadcast television.

In particular, the commission sought comments on how it should handle infrequent cursing and instances of nudity that are not overtly sexual. Nearly 102,000 people and groups answered, the vast majority in opposition to the proposed changes, which would cover broadcast TV and radio stations, but not cable, satellite or the Internet.

“The public is outraged,” said attorney Patrick Trueman, president and CEO of the nonprofit Morality in Media, which has helped lead the charge against a policy shift.

In letter upon letter, private citizens and traditional values groups implored the FCC to refrain from relaxing the rules, arguing that there is already too much smut and profanity on TV.

“Please do not allow nudity and profanity to be broadcast to each and every television capable of receiving your signal,” one woman wrote. “I don’t need to see it and neither do my children.”

“Foul language and nudity have no place on our public airwaves, TV or radio,” another man wrote. “No where in the Constitution is there any rights guaranteed to destroy America’s common decency.”

But the networks support the policy shift, and say their right to free speech is violated when they are penalized for broadcasting material that has become ubiquitous.

“The rationale for broadcaster-specific limits on ‘indecent’ speech has crumbled under the weight of changes in technology and media consumption,” the National Association of Broadcasters wrote in its comments to the FCC. “Children in particular enjoy unfettered access to content via devices that they carry in their pockets and backpacks—access that usually involves no subscription or special parental involvement,” NAB continued. “In this environment, the constitutionality of a broadcast-only prohibition on indecent material is increasingly in doubt.”

Trueman, however, argued broadcast networks and radio stations are trying to put themselves on even footing with cable and satellite outlets, which have greater flexibility when it comes to adult material.

He also criticized former FCC chairman Julius Genachowski for initiating the rulemaking process on indecency this spring—just as he was about to leave office. Genachowski did not issue any indecency fines in his four-year tenure at the FCC, arguing the agency’s authority was in limbo until a court fight over the policy was resolved. More than 1.4 million FCC complaints piled up in that time.

The Supreme Court ended the uncertainty last year by upholding the FCC’s indecency powers.

In April, the FCC announced that it had cleared about 70 percent, or roughly a million indecency complaints, from the backlog by casting out those that were older than the statute of limitations or outside the FCC’s jurisdiction.

As the FCC worked through the complaints, Genachowski announced that the commission was considering changes to the indecency rules.

“Now that it’s all settled, Genachowski, as he’s going out the door, is inviting eight more years of litigation,” Trueman said. “It’s as dumb as can be.”

It isn’t yet clear what the FCC means by “nonsexual” nudity, Trueman said, arguing it could apply to anything from a naked woman lying by herself to singer Janet Jackson’s infamous “wardrobe malfunction” during the halftime show of the 2004 Super Bowl. “The networks will be jumping all over each other to see what they could get away with,” he said.

The FCC is reviewing the comments on the indecency changes, which must be taken into consideration before the agency drafts proposed regulations. Any draft rule published by the FCC would likely be accompanied by another comment period, and it isn’t clear how soon the commission will act.

In the meantime, Trueman’s group is hoping to put pressure on Genachowski’s would-be successor, Tom Wheeler. Lawmakers grilled Wheeler, President Obama’s nominee to serve as the next FCC chairman, on the indecency standards, but he was less than specific about his intentions. Reported in: *The Hill*, July 6.

social media

Comal County, Texas

A Texas teen faces up to eight years in prison after making a comment on Facebook about shooting up “a school full of kids.” Deputies in Comal County, charged then-18-year-old Justin Carter with making “terroristic threats”—a third-degree felony—in March. According to the Comal County Jail, he’s been behind bars since March 27, unable to make his \$500,000 bail.

Justin Carter was 18 back in February when an online video game took an ugly turn on Facebook. Jack Carter says his son Justin and a friend got into an argument with someone on Facebook about the game and the teenager wrote a comment he now regrets. “Someone had said something to the effect of ‘Oh you’re insane, you’re crazy, you’re messed up in the head,’ to which he replied ‘Oh yeah, I’m real messed up in the head, I’m going to go shoot up a school

full of kids and eat their still, beating hearts,’ and the next two lines were lol [laughing out loud] and jk [just kidding],” said Carter.”

A Canadian woman saw the posting, and according to the teen’s father, the woman called police. “These people are serious. They really want my son to go away to jail for a sarcastic comment that he made,” Jack Carter said. “Justin was the kind of kid who didn’t read the newspaper. He didn’t watch television. He wasn’t aware of current events. These kids, they don’t realize what they’re doing. They don’t understand the implications. They don’t understand public space.”

Supporters of Justin Carter, who is now 19, started a Change.org petition for his release. Carter’s father said a San Antonio attorney is interested in taking the case pro bono. Justin Carter has so far been represented by a court-appointed attorney. Reported in: npr.org, July 1.

The Merritt Fund

The LeRoy C. Merritt Humanitarian Fund was established in 1970 as a special trust in memory of Dr. LeRoy C. Merritt. It is devoted to the support, maintenance, medical care, and welfare of librarians who, in the Trustees’ opinion, are:

- Denied employment rights or discriminated against on the basis of gender, sexual orientation, race, color, creed, religion, age, disability, or place of national origin; or
- Denied employment rights because of defense of intellectual freedom; that is, threatened with loss of employment or discharged because of their stand for the cause of intellectual freedom, including promotion of freedom of the press, freedom of speech, the freedom of librarians to select items for their collections from all the world’s written and recorded information, and defense of privacy rights.

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success stories



schools

Glen Ellyn, Illinois

After weeks of debate, Glen Ellyn District 41 school board members voted 6-1 June 10 in favor of allowing *The Perks of Being a Wallflower*, by Stephen Chbosky, back into eighth-grade classrooms with a beefed-up process for giving parents more control over what their kids are reading.

During the school board meeting that attracted more than 100 students, parents and concerned citizens, supporters wore large purple buttons that said “I read banned books” and displayed yellow flowers. More than 25 people addressed the board, many making emotional pleas on the issue, which had attracted the attention of well-known author Judy Blume over the previous weekend.

The book is a coming-of-age story about a high school freshman who encounters situations that involve rape, homosexuality and suicide—mature topics that have made it one of the most banned or challenged books of the past decade.

Its removal from Hadley Junior High School sparked a debate that garnered input from as far away as Australia. Board members said they received more than 500 emails. An online petition received more than 800 signatures in support of bringing the book back. And two local students posted a video on YouTube rallying support that resulted in a meeting with Blume, an author whose teen books also have been challenged or banned. Blume, who was in the Chicago area promoting a movie of her book *Tiger Eyes*, threw her support behind the girls and donated \$5,000 in their honor to the National Coalition Against Censorship.

“That was very surprising to us,” said Maddie Giffin, 15, one of the teens who made the video that encouraged students and parents to contact elected officials. “It was way bigger than what I thought it was going to be.”

Maddie Howard, the other teen involved in creating the video, said the yellow flowers were a way to show how many people in the audience supported the effort. “We bought yellow flowers in order to show people in the board room what side we are on and to display the way in which we are all united,” Maddie Howard said.

Several parents and students also spoke in support of the parents who started the debate when they complained about the mature content in the book. Board member John Kenwood apologized to that family.

“At the end of the day a child got a book that was inappropriate for them.” Board President Sam Black cast the dissenting vote.

“I will agree ... the letters here and the *Art of Reading a Book*, are great first steps to solving the issue,” Black said before the vote. “But I don’t think it’s enough.”

Several board members agreed that a more detailed policy needs to be in place and will be discussed over the summer by members of the board’s Policy Committee. For now, board members approved the language in a revised letter that will go out to parents at the beginning of the school year that describes the kinds of books available as a choice for independent reading.

A signature is required by parents if they want their child to have access to classroom libraries. If a parent chooses not to sign, their child can still access books through the school library. Board member Patrick Escalante wants assurances that kids won’t be bullied for their decisions.

“I want to have that same respect for my kids if I decide not to choose a book,” he said. Reported in: *Chicago Tribune*, June 12.

FTRF, ALA join efforts. . . . from page 175

records that were stripped by the USA PATRIOT Act, as a first step toward reining in what the group calls “runaway surveillance programs.”

The statement points out that “Two years ago, Democratic and Republican members of Congress introduced a bill requiring the government to show that those whose reading records it wishes to gather are actually suspected of criminal activity—something that is required by the Fourth Amendment, which protects us from unreasonable searches and seizures, and the First Amendment, which guards our right to access information of our own choosing. But Congress ignored that bill and reauthorized what we now know are flawed, dangerous powers.”

It continues, “What law-abiding Americans are reading is nobody’s business.”

The Campaign for Reader Privacy was established in 2004 by ALA, the American Booksellers Association, the

Association of American Publishers, and PEN American Center.

The Freedom to Read Foundation and ALA have long been concerned about and prioritized education and advocacy around reader privacy issues as fundamental to our right to access information.

FTRF has engaged in several litigation efforts (including *John Doe and ACLU v. Holder* and *Library Connection v. Gonzales*) to mitigate the excesses of the USA PATRIOT Act and other post-9/11 surveillance initiatives. The ALA Office for Intellectual Freedom sponsors Choose Privacy Week and cosponsors the new ala.org/liberty site, which includes the Privacy Toolkit created several years ago to help libraries provide education about privacy and secure the privacy of their users. ALA is also part of the “Stop Watching Us” coalition, a broad, bipartisan organizing effort to demand accountability around surveillance.

NSA. . . . from page 177

with one end inside the U.S., leading to a doubling of the amount of data passing through its filters.

The Obama administration argues that its internal checks on NSA surveillance programs, as well as review by the FISA court, protect Americans’ privacy. Deputy attorney general James Cole defended the bulk collection of Americans’ phone records as outside the scope of the fourth amendment’s protections against unreasonable searches and seizures.

“Toll records, phone records like this, that don’t include any content, are not covered by the Fourth Amendment because people don’t have a reasonable expectation of privacy in who they called and when they called,” Cole testified to the House intelligence committee on June 18. “That’s something you show to the phone company. That’s something you show to many, many people within the phone company on a regular basis.”

But email metadata is different. Customers’ data bills do not itemize online activity by detailing the addresses a customer emailed or the IP addresses from which customer devices accessed the Internet.

Internal government documents describe how revealing these email records are. One 2008 document, signed by the U.S. defense secretary and attorney general, states that the collection and subsequent analysis included “the information appearing on the ‘to,’ ‘from’ or ‘bcc’ lines of a standard email or other electronic communication” from Americans.

In reality, it is hard to distinguish email metadata from email content. Distinctions that might make sense for telephone conversations and data about those conversations do

not always hold for online communications.

“The calls you make can reveal a lot, but now that so much of our lives are mediated by the Internet, your IP [Internet protocol] logs are really a real-time map of your brain: what are you reading about, what are you curious about, what personal ad are you responding to (with a dedicated email linked to that specific ad), what online discussions are you participating in, and how often?” said Julian Sanchez of the Cato Institute.

“Seeing your IP logs – and especially feeding them through sophisticated analytic tools – is a way of getting inside your head that’s in many ways on par with reading your diary,” Sanchez added.

The purpose of this Internet metadata collection program is detailed in the full classified March 2009 draft report prepared by the NSA’s inspector general (IG).

One function of this Internet record collection is what is commonly referred to as “data mining,” and which the NSA calls “contact chaining.” The agency “analyzed networks with two degrees of separation (two hops) from the target,” the report says. In other words, the NSA studied the online records of people who communicated with people who communicated with targeted individuals.

Contact chaining was considered off-limits inside the NSA before 9/11. In the 1990s, according to the draft IG report, the idea was nixed when the Justice Department “told NSA that the proposal fell within one of the FISA definitions of electronic surveillance and, therefore, was not permissible when applied to metadata associated with presumed U.S. persons.”

The collection of email metadata on Americans began in late 2001, under a top-secret NSA program started shortly after 9/11, according to the documents. Known as Stellar Wind, the program initially did not rely on the authority of any court – and initially restricted the NSA from analyzing records of emails between communicants wholly inside the U.S.

“NSA was authorized to acquire telephony and Internet metadata for communications with at least one communicant outside the United States or for which no communicant was known to be a citizen of the United States,” the draft report states.

George W. Bush briefly “discontinued” that bulk Internet metadata collection, involving Americans, after a dramatic rebellion in March 2004 by senior figures at the Justice Department and FBI, as the *Washington Post* first reported. One of the leaders of that rebellion was deputy attorney general James Comey, whom Barack Obama nominated last week to run the FBI.

But Comey’s act of defiance did not end the IP metadata collection, the documents reveal. It simply brought it under a newly created legal framework.

As soon as the NSA lost the blessing under the president’s directive for collecting bulk Internet metadata, the NSA IG report reads, “DoJ [the Department of Justice] and

NSA immediately began efforts to recreate this authority.”

The DoJ quickly convinced the FISA court to authorize ongoing bulk collection of email metadata records. On July 14, 2004, barely two months after Bush stopped the collection, FISA court chief judge Collen Kollar-Kotelly legally blessed it under a new order – the first time the surveillance court exercised its authority over a two-and-a-half-year-old surveillance program.

Kollar-Kotelly’s order “essentially gave NSA the same authority to collect bulk Internet metadata that it had under the PSP [Bush’s program], except that it specified the datalinks from which NSA could collect, and it limited the number of people that could access the data.”

The Bush email metadata program had restrictions on the scope of the bulk email records the NSA could analyze. Those restrictions are detailed in a legal memorandum written on a November 27, 2007, by assistant attorney general Kenneth Wainstein to his new boss, attorney general Michael Mukasey, who had taken office just a few weeks earlier.

The purpose of that memorandum was to advise Mukasey of the Pentagon’s view that these restrictions were excessive, and to obtain permission for the NSA to expand its “contact chains” deeper into Americans’ email records. The agency, the memo noted, already had “in its databases a large amount of communications metadata associated with persons in the United States.”

But, Wainstein continued, “NSA’s present practice is to ‘stop’ when a chain hits a telephone number or [Internet] address believed to be used by a United States person.”

Wainstein told Mukasey that giving NSA broader leeway to study Americans’ online habits would give the surveillance agency, ironically, greater visibility into the online habits of foreigners – NSA’s original mandate.

“NSA believes that it is over-identifying numbers and addresses that belong to United States persons and that modifying its practice to chain through all telephone numbers and addresses, including those reasonably believed to be used by a United States person,” Wainstein wrote, “will yield valuable foreign intelligence information primarily concerning non-United States persons outside the United States.”

The procedures “would clarify that the National Security Agency (NSA) may analyze communications metadata associated with United States persons and persons believed to be in the United States,” Wainstein wrote.

In October 2007, Robert Gates, the secretary of defense, signed a set of “Supplemental Procedures” on Internet metadata, including what it could do with Americans’ data linked in its contact chains. Mukasey affixed his signature to the document in January 2008.

“NSA will continue to disseminate the results of its contact chaining and other analysis of communications metadata in accordance with current procedures governing the dissemination of information concerning U.S. persons,” the

document states, without detailing the “current procedures.”

It was this program that continued for more than two years into the Obama administration.

Turner, the director of national intelligence spokesman, did not respond to the *Guardian’s* request for additional details of the metadata program or the reasons why it was stopped.

A senior administration official queried by the *Washington Post* denied that the Obama administration was “using this program” to “collect Internet metadata in bulk,” but added: “I’m not going to say we’re not collecting any Internet metadata.”

Indeed, a *Guardian* review of top-secret National Security Agency (NSA) documents suggests that the surveillance agency still collects and sifts through large quantities of Americans’ online data—despite the Obama administration’s insistence that the program that began under Bush ended in 2011.

Shawn Turner, the Obama administration’s director of communications for national intelligence, claimed that “the Internet metadata collection program authorized by the FISA court was discontinued in 2011 for operational and resource reasons and has not been restarted.”

But documents indicate that the amount of Internet metadata harvested, viewed, processed and overseen by the Special Source Operations (SSO) directorate inside the NSA is extensive. While there is no reference to any specific program currently collecting purely domestic Internet metadata in bulk, it is clear that the agency collects and analyzes significant amounts of data from U.S. communications systems in the course of monitoring foreign targets.

On December 26, 2012, SSO announced what it described as a new capability to allow it to collect far more Internet traffic and data than ever before. With this new system, the NSA is able to direct more than half of the Internet traffic it intercepts from its collection points into its own repositories. One end of the communications collected are inside the United States.

The NSA called it the “One-End Foreign (1EF) solution.” It intended the program, codenamed EvilOlive, for “broadening the scope” of what it is able to collect. It relied, legally, on “FAA Authority,” a reference to the 2008 FISA Amendments Act that relaxed surveillance restrictions.

This new system, SSO stated in December, enables vastly increased collection of Internet traffic by the NSA. “The 1EF solution is allowing more than 75% of the traffic to pass through the filter,” the SSO December document reads. “This milestone not only opened the aperture of the access but allowed the possibility for more traffic to be identified, selected and forwarded to NSA repositories.”

It continued: “After the EvilOlive deployment, traffic has literally doubled.”

The scale of the NSA’s metadata collection is highlighted by references in the documents to another NSA program, codenamed ShellTrumpet. On December 31,

2012, an SSO official wrote that ShellTrumpet had just “processed its One Trillionth metadata record.”

It is not clear how much of this collection concerns foreigners’ online records and how much concerns those of Americans. Also unclear is the claimed legal authority for this collection.

Explaining that the five-year old program “began as a near-real-time metadata analyzer ... for a classic collection system,” the SSO official noted: “In its five year history, numerous other systems from across the Agency have come to use ShellTrumpet’s processing capabilities for performance monitoring” and other tasks, such as “direct email tip alerting.”

Almost half of those trillion pieces of Internet metadata were processed in 2012, the document detailed: “though it took five years to get to the one trillion mark, almost half of this volume was processed in this calendar year.”

Another SSO entry, dated February 6, 2013, described ongoing plans to expand metadata collection. A joint surveillance collection operation with an unnamed partner agency yielded a new program “to query metadata” that was “turned on in the Fall 2012.” Two others, called MoonLightPath and Spinneret, “are planned to be added by September 2013.”

A substantial portion of the Internet metadata still collected and analyzed by the NSA comes from allied governments, including its British counterpart, GCHQ.

An SSO entry dated September 21, 2012, announced that “Transient Thurible, a new Government Communications Head Quarters (GCHQ) managed XKeyScore (XKS) Deep Dive was declared operational.” The entry states that GCHQ “modified” an existing program so the NSA could “benefit” from what GCHQ harvested.

“Transient Thurible metadata [has been] flowing into NSA repositories since 13 August 2012,” the entry states. Reported in: *The Guardian*, June 27.

IFC report to ALA council. . . . from page 177

by visiting <http://ala.adobeconnect.com/p85jhyod9g6/>.

Newsletter on Intellectual Freedom

IFC and OIF staff have initiated the physical redesign of the *Newsletter on Intellectual Freedom*. The redesign is the final step in revitalizing and updating NIF for the 21st century. The redesign is intended to recreate the *Newsletter* as a journal that publishes peer-reviewed articles addressing intellectual freedom, privacy, and professional ethics in addition to NIF’s regular reports about censorship, court decisions, and intellectual freedom news.

PROJECTS

Choose Privacy Week

The 2013 Choose Privacy Week campaign asked individuals to consider the question “Who’s Tracking You?” with the

aim of encouraging individuals to understand more precisely what personal data is being collected about them and how businesses, institutions, and government agencies use that data to monitor and shape their daily activities. During Choose Privacy Week, OIF debuted a newly re-designed website which featured guest bloggers discussing important privacy or surveillance topics. The roster of guest bloggers included J. Douglas Archer, Reference and Peace Studies Librarian at the University of Notre Dame and chair of the ALA-IFC Privacy Subcommittee; Khaliah Barnes of the Electronic Privacy Information Center (EPIC); Rachel Levinson-Waldman of NYU’s Brennan Center for Justice; Mitra Ebadolahi of the ACLU’s National Security Project. Tamara Barrett, lead Program Manager for the National Cyber Security Alliance’s Data Privacy Day, also contributed a tip sheet on protecting one’s privacy while using public computers or public Wi-Fi.

The ALA Store featured 2013 Choose Privacy Week products throughout the spring. The graphic for 2013 illustrates the cloud of personal data each person generates that is tracked by government and business alike. We were very pleased to introduce a collateral item that strongly tied the visuals to the goals of the campaign: an RFID blocker sleeve that helps to secure data stored on RFID-enabled card devices.

Choose Privacy Week is one part of the Privacy for All initiative funded by the Open Society Foundations. The grant period concluded on April 1, 2013. OIF staff are exploring other sources of funding for Choose Privacy Week.

Banned Books Week

Banned Books Week 2013, will be held September 22–28. This year’s theme is “Discover What You Are Missing.” The theme is prominently featured on ala.org/bbooks—a new microsite of ALA.

For the third year in a row, ALA will host the Banned Books Week Virtual Read-Out where readers from across the country and around the world can upload videos of themselves reading passages from their favorite banned/challenged books on YouTube. Many highly acclaimed authors such as Stephen Chbosky, Sara Paretsky, and Judy Blume have participated. New videos will include authors Khaled Housseni and Dav Pilkey, and will be featured during Banned Books Week. Check out the videos at www.youtube.com/bannedbooksweek.

BBW merchandise, including posters, bookmarks, t-shirts, and tote bags, are sold and marketed through the ALA Store (www.alastore.ala.org). New this year are tote bags and disappearing ink mugs. More information on Banned Books Week can be found at www.ala.org/bbooks.

RECOMMENDATION

Recommendations Regarding MW13 CD#36

In response to Council’s referral of MW13 CD#36, IFC member Jim Kuhn and Circle of Learning (COL) member Lesliediana Jones developed the following alternative courses of action concerning ALA’s response to whistleblowing:

1. Committee on Legislation/Intellectual Freedom Committee:

- A web or phone presentation jointly to IFC and COL members by either Patrice McDermott, executive director of OpenTheGovernment.org (a coalition of which ALA is a member), or Freedom to Read Foundation General Counsel Theresa Chmara. Specific informational topics include:
 - Did we get what we asked for in the Whistle Blowers' Protection Act?
 - What can ALA do to support future legislation?
 - What can ALA do to support those who act in favor of open government information? These include investigative journalists (think shield laws), submitters of FOIA requests, whistleblowers, etc. We believe this issue requires us to take a broader look at whistleblowers as a class, as opposed to any one specific whistleblower.
- The desired outcome of this expert advice would be support for a white paper, advocacy guide, toolkit, or something else on the topic of increasing librarian, library, and Association support for open access to government information. This should include, but not be limited to, whistleblower issues.
- If the chairs of COL and IFC think it best, establish a joint task force to work on the issue, and report back at the 2014 Midwinter Meeting in Philadelphia. The chairs should consider including a member from Social Responsibilities Round Table (SRRT) and/or Association of College and Research Libraries (ALSC) Law and Political Science Section (LPSS).

2. Washington Office: In the interest of member education, the Washington Office should post publicly all letters it signs on to relating to access to government information (e.g., a security 4 classification reform letter ALA signed on to dated April 23 does not appear to be mentioned on the ALA site. Text: <http://www.fas.org/sgp/news/2013/04/steering.pdf>).

3. Office for Intellectual Freedom: In the interest of member education, OIF should post publicly all resolutions and council actions related to open access to government information, including all whereas clauses and resolved clauses.

ACTION

At Midwinter 2013, an amended resolution, Council Document #36, Resolution Reaffirming ALA's Support for

Whistleblowers, including Bradley Manning, was referred to IFC and COL. IFC and COL recommends no action because there are existing policies, including 3 standing resolutions, (CD #20.7, 2004, CD #20.5, 2008, and CD #19.1, 2011) that address the points in MW Council Document #36.

Following extensive discussion and review on the two resolutions referred to IFC and COL Council II during this conference, AC Document #38, Resolution in Support of Bradley Manning, and CD #39, Resolution in Support of Whistleblower Edward Snowden, our committees determined that specific names should not be included in the resolutions.

The Intellectual Freedom Committee moves the adoption of the following action items:

CD#19.2, Resolution Supporting Librarians Sued for Doing Their Professional Duty (see page 00).

CD#19.3, Resolution on the Need for Reforms for the Intelligence Community to Support Privacy, Open Government, Government Transparency, and Accountability (see NIF, July 2013, page 139).

In closing, the Intellectual Freedom Committee thanks the division and chapter intellectual freedom committees, the Intellectual Freedom Round Table, the unit liaisons, and the OIF staff for their commitment, assistance, and hard work.

RESOLUTION SUPPORTING LIBRARIANS SUED FOR DOING THEIR PROFESSIONAL DUTY

Whereas librarians have recently been sued for expressing their professional opinions concerning the quality of publications;

Whereas those suits bear striking similarities to Strategic Lawsuits Against Public Participation (SLAPPs) used to suppress the expression of public opinion (www.law.cornell.edu/wex/slapp_suit);

Whereas these suits represent an attempt to repress the academic freedom of librarians expressing professional opinions;

Whereas the American Library Association (ALA Policy Manual B.2.5 / old 53.5) affirms academic freedom;

Whereas the American Association of University Professors and the Association of College and Research Libraries in their "Joint Statement on Faculty Status of College and University Librarians" state that "... as members of the Academic community, librarians should have latitude in the exercise of their professional judgment..."

Whereas the American Library Association strongly supports the free and open exchange of information for all persons including librarians (ALA Policy Manual B. 2.1.12 / old 53.1.12); now, therefore, be it

Resolved, that the American Library Association:

Most strongly urges publishers to refrain from actions such as filing libel suits when in disagreement with librarians who have publically shared their professional opinions and instead to rely upon the free exchange of views in the marketplace of ideas to defend their interests as publishers.

FTRF report to ALA council. . . . from page 178

the Board of Trustees, Salem Public Library, alleged that the Salem (Mo.) Public Library and its board of trustees were unconstitutionally blocking access to websites discussing Wicca and other pagan beliefs by using filtering software that improperly classifies the sites as “occult” or “criminal.” Her complaint also alleged that the library allowed access to such sites from a Christian viewpoint and that the library director refused requests to unblock specific sites.

After the district court refused to dismiss Ms. Hunter’s lawsuit and ordered the case to trial to determine if the library director and library board violated Ms. Hunter’s First Amendment rights by refusing to unblock websites discussing astrology and the Wiccan religion, the parties began to prepare for trial in April 2012. Subsequently, the parties agreed to enter into a consent judgment. On March 5, 2013, the district court approved the consent judgment, which ordered the Salem Public Library to stop blocking patrons’ access to websites related to minority religions that the library’s web filters classified as “occult” or “criminal.” The district court retained authority to enforce the judgment in the future.

THE JUDITH F. KRUG FUND AND BANNED BOOKS WEEK

FTRF’s founding executive director, Judith F. Krug, was passionate about the need to educate both librarians and the public about the First Amendment and the importance of defending the right to read and speak freely. The Judith F. Krug Memorial Fund, which was created by donations made by Judith’s family, friends, colleagues, and admirers, supports projects and programs that assure that her lifework will continue far into the future.

On June 5, the Freedom to Read Foundation, via the Judith F. Krug Memorial Fund, announced seven \$1,000 grants to libraries, schools, and other organizations in support of Banned Books Week events. Banned Books Week, which will take place September 22–30, 2013, celebrates the freedom to access information, while drawing attention to the harms of censorship. 2013 marks the fourth year FTRF has awarded Krug Fund Banned Books Week grants.

Recipients of this year’s grants are the Gadsden (Ala.) Public Library Foundation, Judith’s Reading Room, the Kurt Vonnegut Memorial Library, the Livingston Parish (La.) Library, the Lockport (La.) Public Library, the School of Law and Social Justice (Atlanta), and the Yuma County (Ariz.) Library District.

In addition to the grants, FTRF also is providing the grant recipients with Banned Books Week merchandise, sold by the ALA Store. In exchange for the grant, recipients agree to provide FTRF with photos and video of their events. Videos and photos of past grant winners can be

accessed at www.ftrf.org.

One of last year’s winners, the Lawrence (Kan.) Public Library, used its grant to publish and distribute a series of Banned Books Week trading cards designed by local artists. The innovative campaign immediately won international recognition, and collectors’ demand for the cards continues. In April 2013, the Library Leadership & Management Association recognized Lawrence Public Library’s outstanding public relations effort on behalf of Banned Books Week by selecting the Lawrence Public Library to receive its John Cotton Dana Award for outstanding library marketing. The award includes a plaque and a \$10,000 gift. A second series of cards is in the works for Lawrence Public Library’s 2013 Banned Books Week observance.

THE JUDITH F. KRUG FUND AND INTELLECTUAL FREEDOM EDUCATION

In addition to the Banned Books Week grants, the Krug Fund is funding the development of an initiative to provide intellectual freedom curricula and training for Library and Information Science students. This spring, the FTRF Board hired Joyce McIntosh to move the Krug Fund intellectual freedom online education project from an idea into a reality. The project is designed to strengthen LIS students’ understanding of the history, theory, and practical applications of intellectual freedom principles in librarianship.

McIntosh is a librarian, consultant, and writer. She is the former Outreach and Assistive Technology Librarian at Elmhurst Public Library and continues to work there as a substitute librarian. For the past eight years, McIntosh has led training sessions on the topics of intellectual freedom and privacy, and now enjoys leading a program titled “Privacy to Pornography: What Staff Need to Know.” She has served as a liaison from the Public Library Association to FTRF, and has written articles for the Office for Intellectual Freedom on issues such as intellectual freedom best practices, privacy, and ethics. We are very excited to have her involved with this project.

DEVELOPING ISSUES

Our Developing Issues Committee provided information and led discussions about two emerging issues that could impact intellectual freedom in libraries and give rise to future litigation. The first discussion reviewed the recent revelations about the National Security Agency’s use of Section 215 of the USA PATRIOT Act and Section 702 of the FISA Amendment Act to conduct massive surveillance of U.S. citizens’ phone and Internet activities, and the impact on our First Amendment right to freely associate. The second discussion considered the threat posed to the freedom of the press and our right to freely access information by the Department of Justice’s attempts to charge journalists reporting on leaks and national security stories with violations of the Espionage Act.

“ONLY A GAME: WHY CENSORING NEW MEDIA WON’T STOP GUN VIOLENCE”

After the Newtown gun violence tragedy, the FTRF Board voted to provide financial support for a report issued by the Media Coalition that would respond to demands to censor media containing violent content. On June 24, the Media Coalition—of which FTRF is a member—issued the 13-page report, “Only a Game: Why Censoring New Media Won’t Stop Gun Violence” (see page 179). The report represents an effort to educate the public, politicians, and interest groups on what scientific research really says about the impact of media violence on individuals.

Among the report’s key findings:

- Crime statistics do not support the theory that media causes violence.
- Research into the effects of video games on aggression is contested and inconclusive. Much of it suffers from methodological deficiencies and provides insufficient data to prove a causal relationship.
- Government censorship of violent content is barred by the First Amendment for all types of media, but industry self-regulation works.

The report concludes by reaffirming the Media Coalition’s statement addressing violence in the media, which affirms that censorship is not the answer to violence in society. FTRF is a signatory to the statement.

2013 ROLL OF HONOR RECIPIENTS JUDITH PLATT AND RUSS FEINGOLD (see page 179).

I am most pleased to announce that past FTRF president Judith Platt and former Wisconsin senator Russell Feingold have been named the recipients of the 2013 Freedom to Read Foundation Roll of Honor Awards.

Judith Platt received the Roll of Honor Award during this conference’s Opening General Session. We are very pleased to add both Judith and Russ Feingold to the FTRF Roll of Honor.

2013 CONABLE CONFERENCE SCHOLARSHIP

I am also pleased to announce that FTRF has named Amanda Meeks as the sixth recipient of the Gordon M. Conable Conference Scholarship. Meeks received her Master of Library Science from Emporia State University in Portland, Oregon, in 2012. She holds a B.S. in Art Education from Illinois State University Chicago. She has done extensive volunteer work with organizations such as the Q Center in Portland and, currently, with Chicago’s innovative Read/Write Library, where she leads pop-up library initiatives and is launching a bicycle outreach program.

The scholarship committee was particularly impressed

with Amanda’s interest in connecting intellectual freedom to cutting-edge areas of library services. As libraries and librarians take on new challenges and continue to work to serve diverse communities, FTRF is excited to connect with motivated professionals like Amanda in ensuring that the values of intellectual freedom and privacy remain front and center.

The Conable Scholarship was created to honor the memory of former FTRF President Gordon Conable and to advance two principles that Conable held dear: intellectual freedom and mentorship. His unexpected death in 2005 inspired his wife, Irene Conable, and the FTRF Board to create the Conable Fund, which sponsors the Conable Scholarship. The funds provided by the Conable Scholarship provided the means for Meeks to attend this conference, and specifically the various FTRF and intellectual freedom meetings and programs here. She will have the opportunity to consult with professional mentors, and will also present an “ignite” session at the ALA Annual Conference on librarians who are stepping away from their day jobs in order to fill the role of community partners and allies. She will prepare a formal report about his activities and experiences after the conference concludes.

FTRF MEMBERSHIP

The Foundation continues to implement our multi-pronged strategic plan, which includes building our organizational capacity in order to support our litigation, education, and awareness campaigns. Membership in the Freedom to Read Foundation is the critical foundation for FTRF’s work defending First Amendment freedoms in the library and in the larger world. As always, 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 (\$35.00+ for personal members, \$100.00+ for organizations, and \$10.00+ 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.

NEW OFFICERS

At the organizing meeting for the 2013–2014 Board of Trustees, the incoming board elected Julius Jefferson as president, Robert Doyle as Vice President, and Jim Neal as Treasurer. Mary Minow and Nancy Zimmerman will serve as at-large members of the Executive Committee.

report debunks links . . . from page 179

research into the relationship between video games, media images and violence. He also asked Congress to authorize \$10 million for the research.

Horowitz cautioned that any new research must be neutral, comprehensive and transparent – and not driven by politics or professional interest. The research that has been cited to date, he noted, is flawed and inconclusive and has been tainted by a bias against results that do not support the popular view. In fact, Horowitz said, many respected scientists have left this area of research because of the lack of provable data that could lead to publication and professional advancement.

The Media Coalition report is available online at <http://mediacoalition.org/only-a-game/>

“Only a Game” confines itself largely to the issue of violent video games. A 2000 Media Coalition report, “Shooting the Messenger: Why Censorship Won’t Stop Violence,” examines at greater length the scientific claims of short- and long-term links between all kinds of media—movies, TV and music, as well as games—and violent crime. The report concludes with recommendations for helping kids to become smart media consumers and a reaffirmation of the American way of fighting offensive speech: not with censorship but with “more and different speech, informed speech, critical speech.”

Media Coalition, Inc., founded in 1973, is an association that defends the First Amendment right to produce and distribute books, movies, magazines, recordings, home video and video games, and protects the American public’s First Amendment right to have access to the broadest possible range of information, opinion and entertainment.

MIT releases report on Schwartz case . . . from page 180

reviewed 10,000 pages of documents. The college’s administration had no involvement in its work and did not see the report until the panel had completed it.

Among other things, the report noted that while the college made no public statements in support of Swartz or against him, officials privately told the lead prosecutor in the case, Stephen P. Heymann, that “the government should not be under the impression that MIT wanted a jail sentence for Aaron Swartz.”

According to the report, Heymann responded that at least some prison time was appropriate as a deterrent to others.

The report will almost certainly not satisfy those who have argued that MIT could have done much more to end

the prosecution of a young man whose promise was so great and whose actions caused no damage to the institution’s computer network or to the database of scholarly articles. Taren Stinebrickner-Kauffman, Swartz’s partner at the time of his death, called the report a “whitewash.”

Robert Swartz, Swartz’s father, said the university was anything but neutral, pointing to aid that it provided to prosecutors as part of the investigation. MIT, he said, “should have advocated on Aaron’s behalf.” Instead, he said, the report depicts an institution that aided a “vindictive and cruel” prosecution, and “shows no compassion whatsoever.” Through its actions, he said, “MIT in fact played a central role in Aaron’s suicide.”

He said that what happened next would show whether an institution devoted to learning has learned anything from the tragedy, and said he looked forward to working with Reif “to drive real structural change at the university to make sure that this kind of tragedy never happens again.”

In an interview, Abelson said that the report was “more a criticism of the school’s inactions than its actions,” and that the MIT community “was not as engaged as it could be.” Faculty members and students, he said, paid little attention to Swartz’s case before the suicide.

He applauded Robert Swartz’s determination to work with the university to improve its policies. “When he talks about MIT changing, that’s what we all want,” he said—including “maybe not inviting the police in so fast.”

Colleges like MIT, he said, have an obligation to help train future generations not simply in how to use the powerful tools of technology, but to use them wisely. “You can do things that cause tremendous good,” he said, “and you can do things that can harm you to the extent that you can destroy yourself.”

“Aaron Swartz,” he added, “did both.” Reported in: *New York Times*, July 30.

school web filtering needs makeover . . . from page 180

is 99 percent effective, it means they’re probably over-blocking content.

“When you over-block you’re essentially blocking constitutionally-protected content, which is where the ACLU lawsuits and other lawsuits occur. When you over-block that’s the same as being ineffective, knocking the product back down to about 80 percent effective.”

Outside of filter inaccuracy, she said that it’s “extremely easy” for students to get around filters.

“For example, most filters are English-centric, so if you type in something in another language the filter won’t pick it up,” she revealed. “Also, many times if a student uses a search engine other than Google the filter won’t work. Adult content sites are also starting to limit the number

of links so as not to trigger filters; they'll also misspell words and other tricks. Skin tone analysis is also inaccurate because all you'd have to do is make the image blue!"

According to the panelists, vendor web filters need more configurable options for educators and librarians. "That's their job—to help guide students around the Internet," said Caldwell-Stone. "So why are we allowing vendors to do this?"

One reason, panelists argued, is that educators and schools are afraid of lawsuits.

"There's a misconception out there among schools that if the FCC or government catches them being non-CIPA compliant they'll be sued," said one panelist. "But that's not true. Neither the FCC nor the government have the authority to take legal action. The worst that would happen is that the FCC would ask for the eRate funding back."

"It's important to note," he added, "that in CIPA's 10-year history, no school has ever been asked to give back funding."

"It should be up to the educators and librarians to make those kinds of calls, to know what can be filtered and what can't," said Caldwell-Stone. "We need to put that power back into their hands."

Christopher Harris, director of the School Library System for the Genesee Valley Educational Partnership in New York State, says that educators and librarians also need to focus more on "responsible use rather than acceptable use."

"School policies should focus on student responsibility," he said. "That way, they can still address individual rogue access by one student and limit that individual, not the entire student body. There needs to be a culture of flexibility and interactivity, especially concerning BYOD and social media platforms."

Unfortunately, said Houghton-Jan, educators looking for more effective kinds of vendor filters may be disappointed. She explained that almost no vendor spends money on research and development of their web filtering products; meaning, many schools are dealing with older technology.

Martin Garner, chair of the Intellectual Freedom Committee for the ALA, said educators and schools interested in different types of filtering might soon be able to find open source software.

"We asked the question: 'Is it possible to truly create a CIPA-compliant filter?' What we keep circling around is some sort of crowd-sourced, open-sourced software that's extremely configurable."

He continued: "Because right now most of the filters schools are using are blocking things out like Google Docs and other sharing platforms. How are students supposed to become collaborators and creators of content when they can't even access basic tools? These filters and policies are chaining us to the past instead of creating competitive, creative people."

For its part, the ALA is planning on doing a better job of spreading information on CIPA to schools and educators. Reported in: e-School News, August 2.

from the bench. . . from page 194

These opponents reasoned that because the record-keeping statutes could theoretically apply to innocent sexters and hookup-hungry social networkers, the laws were "facially overbroad." In non-legalese, they viewed these laws (as currently written) to be unconstitutional because they criminalize harmless conduct that the laws were not supposed to target.

In support of these arguments, the challengers relied on the expert testimony of two psychology academics who testified during an eight-day bench trial in June about the prevalence of sexting among responsible, mentally stable adults.

But in his decision U.S. District Court Judge Michael Baylson of the Eastern District of Pennsylvania noted that the academics' research did not give a sense of how raunchy Americans' sexts tend to be. That degree of informational nuance is important, Baylson found, because the challenged laws are concerned with "sexually explicit content." The federal criminal code defines this as actual or simulated depictions of intercourse, masturbation, bestiality, sadistic or masochistic abuse, or "lascivious exhibitions" of the genital area.

"[Neither] expert could determine how many sext messages being exchanged between private persons actually fall within the statutes' scope," Baylson wrote. "The frequency of sext messaging is irrelevant for plaintiffs' overbreadth challenge, however, if every sext message were to contain images of breasts, cleavage, and nudity that fell short of 'lascivious' exhibitions of genitals. Plaintiff's additional evidence about technologies through which adult couples exchange sexually explicit content—e.g., 'instaporn' and 'snapchat'—similarly suffers from this shortcoming."

Baylson also noted that opponents failed to prove "any realistic probability of enforcement" of the challenged recordkeeping provisions against consenting adults who sext or use sex-minded social networks.

Baylson's ruling also rejected the plaintiffs' claims that forcing them to engage in the recordkeeping at issue violated their First Amendment rights.

The case has been kicking around Philadelphia's federal court system for a few years: in July 2010, Baylson threw out the challengers' suit without conducting a trial. The challengers appealed, and the U.S. Court of Appeals for the Third Circuit ruled that Baylson should have heard the challengers' evidence before rejecting the claims. Reported in: arstechnica.com, July 18.

prison

Crescent City, California

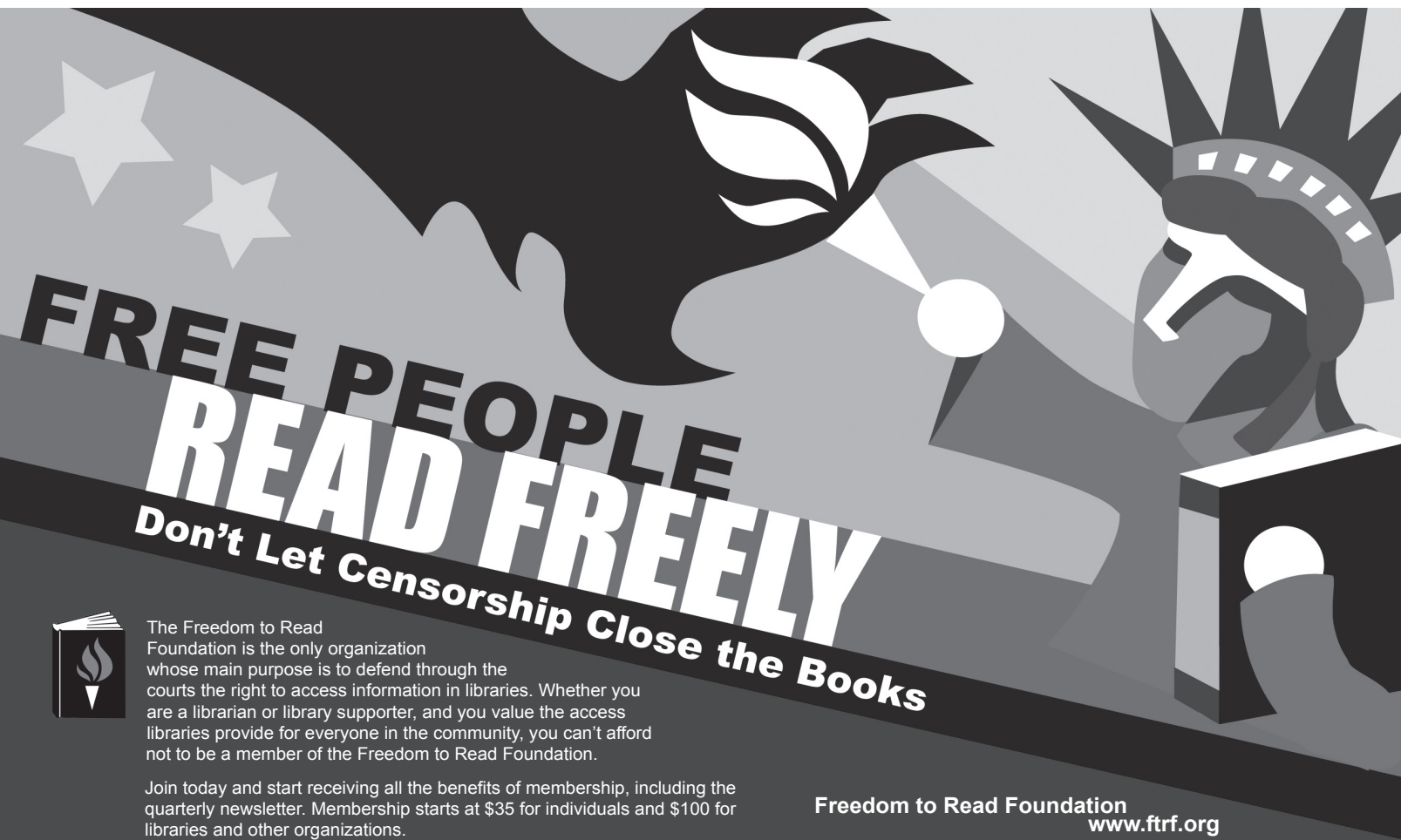
A San Francisco appeals court has ruled that a werewolf erotica novel must be returned to Andres Martinez, an

inmate of Pelican Bay State Prison, after prison guards took it away from him on the grounds that it was pornography. Although the court granted that novel in question, *The Silver Crown*, by Mathilde Madden, is “less than Shakespearean,” it argued that the book nevertheless has literary merit and shouldn’t be banned under prison obscenity laws. The court also noted that “the sex appears to be between consenting adults. No minors are involved. No bestiality is portrayed (unless werewolves count).”


The book, which contains several lengthy depictions of fanged fornication, is described thusly: “Every full moon,

Iris kills werewolves. It’s what she’s good at. What she’s trained for. She’s never imagined doing anything else ... until she falls in love with one. And being a professional werewolf hunter and dating a werewolf poses a serious conflict of interests.”

Mathilde Madden is a pseudonym for Mathilda Gregory, a journalist. She wrote, “I am thrilled someone has gone to so much trouble to read something I wrote. I hope the book can live up to expectations.” Reported in: npr.org, June 13.



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intellectual freedom bibliography

Compiled by Nanette Perez, Program Officer, ALA Office for Intellectual Freedom

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