

newsletter  
on  
**intellectual**  
**freedom**



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## **ALA names Barbara M. Jones to head OIF, FTRF**

The American Library Association (ALA) has named Barbara M. Jones its new director of the ALA Office for Intellectual Freedom and its new executive director of the Freedom to Read Foundation, effective December 14, 2009. Jones succeeds the late Judith F. Krug, who led the office and the foundation for more than forty years and died April 11.

Jones brings 25 years of active engagement on intellectual freedom issues to her new position. She currently serves as treasurer of the Freedom to Read Foundation. She served on the FAIFE (Freedom of Access to Information and Freedom of Expression) IFLA Standing Committee, serving as Secretary to FAIFE from 2007–2009. She was a member of the ALA Intellectual Freedom Committee (1990–1994, 2001–2003) and currently serves on the IFC Privacy Subcommittee (2009).

In 2004–05 (and 1986–87) she served as Chair of the Intellectual Freedom Round Table. She is currently an ACRL Legislative Advocate and has also served on state Intellectual Freedom Committees in Iowa and Minnesota. As a FAIFE trainer and expert advisor, Barbara has developed curricula and training programs, and conducted workshops internationally.

In addition, Jones has consulted, spoken and written extensively in the area of intellectual freedom. In 2009, she published *Intellectual Freedom in Academic Libraries* with ALA Editions. Earlier writing includes *Libraries, Access, and Intellectual Freedom: Developing Policies for Public and Academic Libraries* (ALA Editions, 1999) and a number of articles and chapters, including “Libel Tourism: What Librarians Need to Know,” for *American Libraries* (2009–2010).

Jones received the Robert B. Downs Intellectual Freedom Award from the University of Illinois Graduate School of Library and Information Science in 2008. She was named to the Freedom to Read Foundation Honor Roll at the Foundation’s 30th anniversary gala in 1999.

In her letter of application, Jones said, “Twenty-first century IF issues are evolving quickly from those of the twentieth, due to the following: globalization of intellectual freedom issues; technology and privacy concerns; and an increasingly contentious civic discourse as witnessed in the recent health care Town Meetings . . . New intellectual freedom issues will need to be articulated in terms of our unchanging IF ideals—to the ALA membership, the general public, and to the organizations with which ALA collaborates.”

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Views of contributors to the Newsletter on Intellectual Freedom are not necessarily those of the editors, the Intellectual Freedom Committee, or the American Library Association.

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## colleges and universities urged to defend free speech

Citing Yale University Press's recent decision to remove all images of Muhammad from a scholarly book in response to fears their publication would trigger violence, a long list of academic and free-speech groups on November 30 called on colleges and universities "to exercise moral and intellectual leadership" and stand up for free expression.

A joint statement issued by the groups, which include the American Association of University Professors and the College Art Association, characterized Yale's decision as one of several recent developments that "suggest that our longstanding commitment to the free exchange of ideas is in peril of falling victim to a spreading fear of violence."

Among other incidents the statement cited were a 2005 decision by Hamilton College, in New York, to cancel a speech by Ward Churchill, then a professor at the University of Colorado at Boulder, in response to threats of violence, and a decision last year by the San Francisco Art Institute to close a controversial video exhibition in response to threats of violence by animal-rights activists.

"The failure to stand up for free expression emboldens those who would attack and undermine it," the statement said. It called on higher-education institutions "to stand up for certain basic principles: that the free exchange of ideas is essential to liberal democracy; that each person is entitled to hold and express his or her own views without fear of bodily harm; and that the suppression of ideas is a form of repression used by authoritarian regimes around the world to control and dehumanize their citizens and squelch opposition."

Among the other organizations that signed the statement is the National Coalition Against Censorship, an alliance of fifty national organizations, including the American Library Association, that previously had joined other groups in sending Yale officials a letter protesting the university's decision to remove the cartoons from *The Cartoons That Shook the World*, by Jytte Klausen. Other signatories to the statement include the Foundation for Individual Rights in Education, the International Publishers Association, the Modern Language Association, and both the American Federation of Teachers and the National Education Association.

The statement came close on the heels of an announcement by the AAUP that it would begin a major campaign to protect academic freedom at public colleges in response to recent federal-court decisions seen as eroding faculty members' speech rights.

The new campaign urges national faculty unions and higher-education associations, as well as individual public colleges' faculty groups and administrators, to push such institutions to adopt policies broadly protecting faculty speech dealing with academic matters, institutional governance, teaching, research, and issues outside the workplace.

The campaign also calls for faculty members to work with the AAUP to help it monitor and weigh in on new court cases in which the speech rights of faculty members are threatened.

"The right of faculty members at public colleges and universities to speak freely without fear of retribution is endangered as never before," the association said in a newsletter sent to about 400,000 faculty members that describes the campaign, called "Speak Up, Speak Out: Protect the Faculty Voice on Campus."

In a report issued in connection with the campaign, an AAUP subcommittee consisting mainly of prominent First Amendment scholars declared that recent federal-court decisions dealing with academic freedom are "unexpected and potentially ominous."

What triggered the shift in the legal climate, the report says, was a 2006 U.S. Supreme Court ruling, in the case *Garcetti v. Ceballos*, which held that government agencies can restrict statements their employees make in connection with their official duties. The case did not deal directly with higher education, and the court majority's opinion explicitly put aside the question of whether its reasoning "would apply in the same manner to a case involving speech related to scholarship or teaching." Nevertheless, several federal courts have cited the *Garcetti* ruling in subsequent decisions holding that faculty members at public colleges were not protected by the First Amendment in speaking out about matters related to their official duties.

Most recently, the U.S. Court of Appeals for the Third Circuit held last spring that Delaware State University acted within its rights in disciplining a professor for statements made in connection with activities that were not specifically covered by his contract. In another case pending before the U.S. Court of Appeals for the Ninth Circuit, *Hong v. Grant*, a lower federal court held that an emeritus professor at the University of California at Irvine was acting officially—and thus not entitled to First Amendment protections against actions by his employer—when he made statements connected with the hiring, promotion, and staffing decisions of his academic department.

In light of such rulings, the new AAUP report says, faculty members at public colleges can no longer count on the courts to protect their First Amendment rights and instead should work to ensure their speech is protected by institutional policies.

Rachel Levinson, senior counsel at the AAUP, said, "If we were to say what is the one single most important thing people should do, it is to look at the current academic-freedom policy language in a faculty handbook or contract or collective-bargaining agreement, and make sure that it protects the sort of speech or involvement in institutional governance that we discuss in the report."

The AAUP report, "Protecting an Independent Faculty Voice: Academic Freedom After *Garcetti v. Ceballos*," was endorsed by the association's Committee A on Academic

Freedom and Tenure. It offers suggestions of policy language that colleges can adopt, calling attention to what it regards as a model policy adopted by the University of Minnesota's Board of Regents in June.

The Minnesota policy defines academic freedom as "the freedom to discuss all relevant matters in the classroom, to explore all avenues of scholarship, research, and creative expression, and to speak or write without institutional discipline or restraint on matters of public concern as well as on matters related to professional duties and the functioning of the university." It also states, however, that faculty members have a responsibility to faithfully perform their professional duties, to recognize "the demands of the scholarly enterprise," and to make clear when they are speaking on matters of public interest that they are not speaking for their institution.

In a written statement announcing the new AAUP campaign, Cary Nelson, the organization's president, said, "The current threat to faculty speech jeopardizes more than just individual educators" because faculty members speak out on "issues critical to society."

Among the organizations that the AAUP subcommittee's report suggests enlisting in the campaign is the American Council on Education, an umbrella group for colleges and higher-education associations. That organization's general counsel, Ada Meloy, said that the council has not officially joined the AAUP's campaign but "we do have the important issue of academic freedom on our radar screen," and that ACE plans to devote a session to the broad subject, and the recent court rulings, at its next annual meeting, in March.

Meloy said she agreed with the AAUP that higher education is a "unique haven" in American society for the free exchange of ideas, and said that the council had been "gratified" to see Justice Kennedy's statement in *Garcetti* indicating that different standards might apply at colleges and universities.

Meloy said she hasn't sensed "a raft of misapplications" of *Garcetti* to higher education, and that it was important to remember that each case has unique facts and circumstances. Nonetheless, she said she thought the University of Minnesota's policy was "well thought out," and that the strategy of not relying on courts to protect academic freedom is "a wise one." Meloy particularly praised the Minnesota policy for noting "the importance of clarity when a faculty member is not speaking for the institution."

The AAUP's concern about *Garcetti* predated the Supreme Court ruling. The association, along with the Thomas Jefferson Center for the Protection of the First Amendment, filed a brief in the case, saying: "The most valuable contributions that most university scholars and teachers make to public debate and understanding typically derive from their academic disciplines or fields of expertise.

*(continued on page 38)*

## Google and partners revise terms of digital book deal

Google and groups representing book publishers and authors filed a modified version of their controversial books settlement with a federal court on November 13. The changes would pave the way for other companies to license Google's vast digital collection of copyrighted out-of-print books, and might resolve its conflicts with European governments.

The settlement, of a 2005 lawsuit over Google's ambitious plan to digitize books from major American libraries, outlined a plan to create a comprehensive database of in-print and out-of-print works. But the original agreement, primarily between Google, the Authors Guild and the Association of American Publishers, drew much criticism.

The Justice Department and others said Google was potentially violating copyright law, setting itself up to unfairly control access to electronic versions of older books and depriving authors and their heirs of proper compensation.

The revisions to the settlement primarily address the handling of so-called orphan works, the millions of books whose rights holders are unknown or cannot be found. The changes call for the appointment of an independent fiduciary, or trustee, who will be solely responsible for decisions regarding orphan works.

The trustee, with Congressional approval, can grant licenses to other companies who also want to sell these books, and will oversee the pool of unclaimed funds that they generate. If the money goes unclaimed for ten years, according to the revised settlement, it will go to philanthropy and to an effort to locate rights holders.

The changes also restrict the Google catalog to books published in the United States, Britain, Australia or Canada. That move was intended to resolve objections from the French and German governments, which complained that the settlement did not abide by copyright law in those countries.

The revised settlement could make it easier for other companies to compete with Google in offering their own digitized versions of older library books because it drops a provision that was widely interpreted as ensuring that no other company could get a better deal with authors and publishers than the one Google had struck.

Judge Denny Chin of the United States District Court for the Southern District of New York was expected to set a date for a "fairness hearing," where arguments from both sides will be heard about whether or not to approve the settlement.

The changes did not please all the opponents of the original settlement. But the parties are hoping they will placate one critic, the Justice Department, which in September asked a federal judge to reject the original \$125 million

agreement. While the decision on whether to approve the deal will be in the hands of Judge Chin, the Justice Department's opinion is an important factor.

Gina Talamona, a spokeswoman for the Justice Department, said that the department would review the filing, and that its investigation into possible anticompetitive practices involving the rights to digital books was continuing.

Google and its partners had hailed the original agreement, signed in October 2008, as a public good. They said it would allow Google to create an immense digital library that would expand access to millions of out-of-print books, while creating new ways for authors and publishers to profit from digital versions of their works.

Google's library would be searchable online, and users would have free access to twenty percent of the text in each book. Google would also sell subscriptions to the entire collection to universities and other institutions. Every public library in the United States would be able to offer its patrons free access to the full collection at one terminal. Users would be able to buy access to full texts at home. Google, authors and publishers would split all revenue generated through the system.

As part of the settlement, Google would pay to establish a Books Rights Registry, to be run by representatives of authors and publishers, that would administer payments.

But critics of the agreement began surfacing earlier this year. Academics, legal scholars and some librarians grew concerned that the settlement would grant Google a virtual monopoly over orphan works. That would make it nearly impossible for anyone else to build a comprehensive digital library to compete with Google's. Some librarians feared that without competition, Google would be free to raise prices arbitrarily.

Other critics said the agreement turned copyright law on its head by granting Google the license to profit from works unless rights holders objected. Some argued that orphan works authors and foreign authors were not properly represented by the Authors Guild. The proposed settlement prompted several hundred filings with the court, the vast majority opposing all or parts of the deal.

In a September 18 filing, the Justice Department echoed many of the critics. While saying that the settlement provided many benefits, it urged Judge Chin to reject it, saying

it raised antitrust, class-action and copyright issues. But the Justice Department also encouraged the parties to work to modify the agreement to salvage its benefits and overcome its problems.

The Justice Department filing prompted the parties to withdraw the original agreement and revise it.

The revised settlement also left some privacy advocates underwhelmed. According to blogger Wendy Davis, "Civil liberties organizations have pointed out that the agreement leaves Google in a position to amass at least as much in-depth information about users' reading habits as libraries."

"For that reason," Davis continued, "groups like the Electronic Frontier Foundation have said the settlement should have terms obligating Google to protect users' privacy—such as provisions requiring the deletion of login information. Instead, the amended pact merely says that Google won't share private information with the registry without 'valid legal process.'"

Added Davis, "This promise doesn't go nearly far enough to solve the privacy problems posed by a digital book registry. First, requiring 'valid legal process' doesn't set the bar all that high considering that any judge can rubber-stamp a subpoena requiring Google to disclose information about readers. Sure, Google can challenge subpoenas in court, but nothing in this agreement appears to require the company to do so.

"In other situations, Google has notified users about subpoenas, which at least allows people the opportunity to argue that subpoenas should be quashed. But individuals aren't always in a position to hire lawyers for that purpose.

"Of course, Google might be planning to hold itself to higher standards—including notifying users about subpoenas and giving them the opportunity to object before the company complies. Google might also be planning to fight the subpoenas on users' behalf. But it's not clear that this agreement requires the company to do so."

"The reality," Davis concluded, is that "as long as Google plans to collect and retain information tying users—or even IP addresses—to reading material, users' privacy is vulnerable. The EFF and ACLU are warning that without more built-in protections, Google could 'become a one-stop shop for government surveillance into the reading habits of millions of Americans.' Reported in: *New York Times*, November 14; mediapost.com, November 16. □

**SUPPORT  
THE FREEDOM  
TO READ**

## WTO could challenge Internet censorship

Internet censorship is open to challenge at the World Trade Organization (WTO) as it can restrict trade in online services, a forthcoming study argues. A censorship case at the WTO could raise sovereignty issues, given the clear right of member states to restrict trade on moral grounds—for example, by blocking access to child pornography websites.

The study could hold implications for the Australian government, which is planning to introduce a national web filter against “unwanted material.”

But a WTO ruling could set limits on blanket censorship and compel states instead to use more selective filtering, according to the study, to be published this week by European think-tank ECIPE.

“Many WTO member states are legally obliged to permit an unrestricted supply of cross-border Internet services,” Brian Hindley and Hosuk Lee-Makiyama wrote in the report.

Many countries censor the Internet for political or moral reasons. China has developed one of the most pervasive systems, in Cuba all unauthorized surfing is illegal, and the Australian Government is planning a mandatory filter for national rollout.

Internet use is particularly strong in Asia. China, with 298 million people online, overtook the US in numbers of Internet users in 2008, the study said. The study noted that search engine Baidu, which follows official rules on censorship, has overtaken global leader Google in the Chinese market. Baidu has 64 per cent of the 2 billion yuan (\$322.4 million) Internet search market in China, while Google has 31.3 per cent. In 2002, Baidu had 3 per cent and Google 24 per cent, the study said.

WTO rules allow members to restrict trade to protect public morals or public order, but those measures must be necessary and disrupt trade as little as possible. The study argues that a strong case can be made against disproportionate censorship that disrupts commercial activities by more than necessary to achieve the goals of the censoring government. Proportionate censorship would mean selective filtering rather than arbitrary and entire blockages or permanent bans.

Some states might argue such filtering would impose an impractical burden, but others, such as China with its “Golden Shield”—known in the West as the “Great Firewall of China”—already have well-staffed infrastructure in place for selective censorship.

“There is a good chance that a panel might rule that permanent blocks on search engines, photo-sharing applications and other services are inconsistent with (WTO services) provisions, even given morals and security exceptions,” the study said. Reported in: *news.com.au*, November 5. □

## libel law campaign launched in England

Index on Censorship and English PEN launched a campaign November 10 for the reform of English libel law, warning that the current legislation risks turning the country into a “global pariah.”

The two bodies, which promote free speech and the human rights of writers, are calling for a series of changes to UK law. They want to see the burden of proof in libel cases shifted from defendants to claimants and a “single-publication rule” that would limit the scope of libel actions to the original allegations that caused offense.

The use of conditional fee agreements—“no win no fee” deals between litigants and law firms that can ramp up the costs incurred by media organizations defending libel actions—should also be reformed, they said. And corporate bodies should be exempted from libel law, unless they can prove malicious falsehood.

The two organizations published a report on English libel law reform and launched a website to promote their campaign.

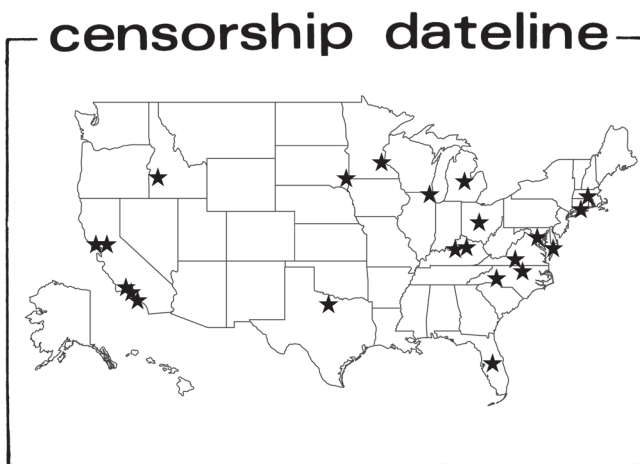
English libel laws have long been criticised for inhibiting freedom of speech, and have become even more controversial in recent years. The country’s reputation for so-called “libel tourism” prompted a warning in November from US publishers that they were considering abandoning the sale of newspapers and magazines in Britain and blocking access to websites.

Last year the United Nations Human Rights Committee said the “practical application of the law of libel has served to discourage critical media reporting on matters of serious public interest, adversely affecting the ability of scholars and journalists to publish their work.”

And the use of “super-injunctions” was put under the spotlight by October’s *Trafigura* affair, when an oil trading firm tried unsuccessfully to prevent the *Guardian* newspaper from reporting a parliamentary question.

“Our libel laws allow people accused of funding terrorism or dumping toxic waste in Africa to silence their critics whilst ‘super-injunctions’ stop the public from even knowing that such allegations exist,” said Jonathan Heawood, the director of English PEN. “We need to reform our libel laws now, and that’s why we’re launching a national campaign to persuade our politicians to do so.”

John Kampfner, the chief executive of Index on Censorship, added: “If we don’t act we’re at risk of becoming a global pariah. There are US states who view English libel law as so damaging to free speech they have passed laws to effectively block the decisions of English judges. Our report is an important milestone in modernizing our antiquated and chilling approach to free expression.” Reported in: *Guardian*, November 10. □



## libraries

### Huntington Beach, California

A district superintendent decided November 3 to keep Maya Angelou's autobiography in middle school libraries but added a restriction that parents must provide consent for student to check out the book.

"While the (district book review committee) agreed that the book may contain content that might be objectionable to some, it also reinforces . . . themes such as overcoming adversity," Ocean View School District Superintendent Alan Rasmussen said. "I believe parents should have the right . . . to decide if the child is going to read that book or not."

Rasmussen's decision can be appealed for a final vote by the school board. The district already had rules that the book can only be checked out by eighth-graders.

The district reviewed the book *I Know Why the Caged Bird Sings* after Westminster resident Judy Ahrens read a rape scene of an 8-year-old girl from the book during a trustee meeting October 6. The bestseller is the first volume of Angelou's autobiographical series and was the third most challenged book in schools during the 1990s, according to the American Library Association.

Ahrens, a former Westminster School District trustee, and Ocean View School District trustee John Briscoe were spearheading the effort to ban the book, saying the book's contents were inappropriate for children. During the meeting, Briscoe presented about 40 other signed objections to the book.

"The book is a good read . . . for an adult. It is inappropriate for boys and girls," said Briscoe after the

superintendent's decision. "The solution proposed by the administration is an admirable start. There are a few things more that need to be done."

Ahrens was the only public speaker at the meeting about the book. "Parents expect their kids to be kids and not elevated to some level to read the crazy and uncomfortable stuff that I read," Ahrens said referring to her October 6 reading.

School board member Debbie Cotton said she supported the superintendent's decision. "Any attempt to challenge our First Amendment rights . . . must be done with the greatest care and thought," she said. Cotton said she was "astounded" by the rape scene but has since read the book. "When you read the book, there is a context for it," she said. "It is also done from an 8-year-old perspective. It is not done in an obscene way."

The book has been at Vista View and Spring View middle schools since 1995 and has been checked out five times.

Rasmussen's decision falls in line with the district's book review panel composed of four middle school teachers, a middle school principal and the district's director of instruction. The group submitted their report to Rasmussen also recommending that the book not be banned and that parents provide consent.

Ahrens and Briscoe made a similar presentation from Angelou's book at an October 20 City Council meeting urging community members to lobby the Ocean View school board to ban the book. The meeting was broadcast live on the city's cable channel. Reported in: *Orange County Register*, November 3.

### Cheshire, Connecticut

Emotions ran high October 22 as more than 100 people turned out at Cheshire Town Hall to tell the library board how they felt about efforts to ban a book about the 2007 slayings of members of the Petit family. Tears were shed, voices were raised and applause was given, and by the end of the two-hour meeting, the board and Library Director Ramona Harten had heard from more than two dozen people speaking on both sides of the issue.

The board will have to decide what it wants to recommend to Harten about her decision to order two copies of Brian McDonald's book, *In the Middle of the Night: The Shocking True Story of a Family Killed in Cold Blood*.

"There were a lot questions that were raised tonight that we need to answer," said Carol DiPietro, the board's chairwoman. The board is also expected to discuss whether to make any changes regarding how books for the library are chosen.

McDonald's book is about the July 2007 home invasion in which Dr. William Petit's wife and two daughters were slain, and their house burned. Petit was badly beaten, but escaped. "I just think it would be a huge injustice if this

book gets into this library,” said Kim Ferraiolo, whose Sorghum Mill Drive home is right next to where the Petits lived. Ferraiolo’s children frequently played with the younger Petit daughter, Michaela, 11, on a trampoline that sat in the Petits’ backyard.

Some who spoke want the book kept off the library shelves until the men accused of the crime, Joshua Komisarjevsky and Steven Hayes, have been tried. Hayes’ trial is scheduled to begin early next year. His attorney is trying to find out how McDonald was allowed to interview Komisarjevsky in prison because Komisarjevsky blames Hayes for the slayings.

The interviews and correspondence that McDonald had with Komisarjevsky were in apparent violation of a court-imposed gag order. But a number of people who support Harten’s decision to acquire the books say banning any book is a bad idea.

“In this country, people have a right to choose what we want to read and what we don’t want to read,” said Karen Giannamore, a Chesterwood Court resident.

Efforts to ban the book are being led by Marilyn Bartoli, who serves on the library board and is also Republican Town Committee chairwoman. Bartoli has denied that her intentions are political, but has declined to recuse herself from participating in the board’s deliberations.

“As Shakespeare said, ‘Methinks the lady doth protest too much,’” said Marty Coburn, a Democrat who serves on the Planning and Zoning Commission.

Patrick Doyle, an education program manager with the Connecticut office of the American Civil Liberties Union, said libraries were created to be a haven for intellectual freedom. “The best way to counter obnoxious speech is to counter it with more speech, not less,” Doyle said as a few people heckled from the back of the room, calling him “a freak.” Reported in: *New Haven Register*, October 23.

### **Nampa, Idaho**

A Caldwell mother says she wants a book shelved in the juvenile section of the Nampa Public Library banned from the stacks. Shelly Gering says her 4-year-old picked out the book, *How to Get Suspended and Influence People*, by Adam Selzer, and she was appalled that the cover included an abstract drawing of a nude woman and the back cover contains some profanity.

The book explores the theme of censorship through the eyes of a gifted eighth-grader who is suspended after making an avant-garde sex-education video for a class project.

Library Director Karen Ganske says she’d be willing to move the book to the teen section—even though stories about middle-schoolers are generally kept in the juvenile section—but she won’t take the book out of the library. Ganske says the book is edgy and one kids would likely find fun and thought-provoking, not inappropriate. Reported in: *Idaho Press-Tribune*, October 22.

### **Nicasville, Kentucky**

An evangelist yelled at the Jessamine County Public Library Board, then turned his attention to the seated crowd of more than 100: “If this is not pornography, what is?” He had passed out photocopies of a page out of *The League of Extraordinary Gentlemen: Black Dossier*, a graphic novel, to each of the board’s members, and he held a copy aloft as he spoke.

Earl Lee Watts, who said he evangelizes around the state but has no parish, then explained to the rest of the crowd what the picture contained: A naked woman sitting on a naked man’s lap being fondled.

Bobbi Stout responded by saying she had spent some time studying the Bill of Rights, freedom of speech and what her preacher daddy who fought in World War II had said about standing up for what you believe. “It’s dangerous to democracy when an interest group imposes its views on another,” she said. “Stand up for the Constitution.”

It was not business as usual during the public comment interval of the library board’s November meeting. A petition with 950 signatures was presented to the board to overturn its collection policy. The petition specifically asked for the removal of four works on the grounds that they “offended me in that they depict sexual acts and/or describe such acts in a way that in my opinion are contrary to the Jessamine County public opinion” of what should be in a public, taxpayer-supported collection. The petition concluded the works constituted a public safety issue in that they encourage sexual predators.

The works were the graphic novel, *The League of Extraordinary Gentlemen: Black Dossier*, by Alan Moore; *Snuff*, by Chuck Palahniuk, *Choke*, a DVD based on a novel by Palahniuk; and the DVD *Ron White: You Can’t Fix Stupid*.

A Clark County librarian cried when Stout spoke. Darryl Diddle, a Wilmore minister, presented the petition, and DeWayne Brewer, Brookside Baptist’s pastor, asking for a little common sense, warned that if the Bible ever went into graphic novel form, the banning committee would have something to really fret about.

It was, in short, an hour of heartfelt conviction for 23 speakers, who were pretty evenly divided as to why they were supporting or opposing a change in the library’s policy about checking out books to minors. For those under age 18 to get a library card, parents must sign the application. The library considers parents responsible for what children and teens check out; librarians do not have discretion to refuse to lend items.

Controversy about the policy arose in September, when two library employees, Sharon Cook and Beth Boisvert, decided together to disallow an 11-year-old from checking out *Black Dossier*, a book they considered obscene. Cook previously kept the book off the shelves by repeatedly checking it out from the graphic novels section of the library because, she said, she felt it was too close to the



young adult fiction section. She worried about children finding the book.

The women were both fired for their actions, which included checking library patron information to find out who placed a hold on the book.

Community response was swift, with a division appearing between those who felt Cook and Boisvert were reasonably trying to protect children from obscene materials and those who said libraries are not to act in the place of parents in determining what children should read.

The November 18 meeting was the first chance for the public to address the issue in front of the board. Each speaker was to get 2 minutes; public comment lasted for an hour.

Board chairwoman Billie Goodwill explained the board's current position, assuring the crowd that "legal standards are the yardsticks" and that the board has not exceeded the Kentucky Revised Statutes. She explained that *Black Dossier* came with laurels and awards and that "it met our criteria for purchase."

Speakers included area librarians, preachers, a columnist for the *Jessamine Journal*, parents who wanted the library to act in their stead and parents who didn't.

West Jessamine High School sophomore Alexis Kierstead brought a petition signed by 244 students asking that the board guide their reading decisions. She said they all believe that "it takes a village to raise a child." She also confessed to having hidden books from her parents.

No action was taken by the board. When asked by some in attendance when action would be taken, Goodwill said board agendas are posted online. The board may decide to change the current policy or leave it as is.

Cook said later the meeting was "like we were pushing on a rope. We're going to leave it with them. They are a good group. We need to let them do their work. I do believe that sincerely." Boisvert said she appreciated everybody showing up "and telling us how they feel." She repeated the "everybody" part, then added: "That's how people feel, and that was good they got to say it." Reported in: *Lexington Herald-Leader*, November 8, 19.

### **Salisbury, Maryland**

Wicomico County Superintendent of Schools Dr. John Fredericksen on October 15 announced that a controversial series of Japanese graphic novels has been removed from all public school media centers.

On October 6, a member of the Wicomico County Council presented Wicomico County Board of Education officials with several photo-copied pages from *Dragon Ball: The Monkey King*, a book checked out by a 9-year-old Pittsville Elementary and Middle School student. A complaint form was later received from a parent.

There were concerns expressed that the books, which school officials later learned were intended for young

adults, depict some violence and show nudity. Because of the concerns, school officials began the process of removing all "Dragon Ball" series books at Pittsville Elementary and Middle School and Parkside High School from media center shelves for a committee review as required by procedures and policy.

On October 12, a Board of Education committee met to review *Dragon Ball: The Monkey King*. Fredericksen said he and other committee members read the book, and several committee members read other books from the "Dragon Ball" series that were pulled from media center shelves for review. Fredericksen said that after review, the committee recommended removal of all books in the "Dragon Ball" series. The committee is continuing to study the "Dragon Ball Z" series (intended for all audiences) for further recommendations, Fredericksen said.

Fredericksen said he agreed with the committee's recommendation and is directing that the books pulled for committee review not be returned to school media centers. "These books will not be available in any Wicomico school media center," Fredericksen said.

Fredericksen said this decision did not deny the use of acceptable graphic novels as an available educational tool in the school system. He noted that graphic novels with appropriate content can be a useful tool in encouraging reluctant readers to pick up a book and read.

Fredericksen said that as a result of this incident, Wicomico public schools are instituting more focused and ongoing professional development training on the selection of media materials and additional procedures to handle student requests for media books and resources.

"The Wicomico County Public School System regrets the offense caused to the family that submitted a complaint about the book," Fredericksen said. "I urge anyone who has a concern about reading materials brought home from school to contact the school so that the procedures and policies already in place for handling such concerns can be followed and a resolution to the concern can be reached." Reported in: *wboc.com*, October 15.

### **Owosso, Michigan**

The Shiawassee District Library Board adopted a revised Internet policy November 11 that requires filtering on the organization's public computers, closing the book on a nearly six-month controversy on how the library should handle online content.

After the policy was unanimously passed by the Board, many of the residents who packed into the downstairs children's library portion of the Owosso branch broke into applause. Board members, however, reiterated that no filtering software or policy is perfect and people will always find ways to break the rules.

"Is there anything that a Board can do to 100 percent stop everyone who has misgivings or someone who is

trying to do something devious?” Trustee Travis Senk said. “I’m not sure.”

With the policy in place, patrons of the SDL may request for designated computers to have Internet filtering disabled temporarily—something that hadn’t been an option since the SDL began using the filtering software “Untangle” after a Board vote in June.

The controversy began earlier this year when Owosso resident Catherine Loxen informed Board members her 10-year-old granddaughter accidentally saw a man viewing adult material on a computer at the Owosso branch of the Shiawassee District Library.

Since then, a group of people has demanded the library filter all computers to prevent minors from viewing such material. There have been others who say filtering should not take place because it blocks legitimate Internet content.

The Internet policy approved by the Board restricts patrons under the age of 18 “from accessing obscene material or sexually explicit material deemed harmful to minors (as those terms are defined by state law) in their use of the Internet.” The policy also says minor and adult patrons may have the filters disabled if they make a request in writing stating they are doing so for research purposes, but minors must have a parent or guardian with them at the computer at all times.

Adults also will not be allowed to use the Owosso’s children’s library computers unless assisting a child. Also, no patron younger than ninth grade will be allowed to use the computers in the adult section of the Owosso branch without a parent or legal guardian present at the computer.

However, the policy also states patrons requesting filters be removed must use one of two designated computers at the Owosso branch that have privacy screens. The Durand branch has only one computer that allows for the filter to be disabled. The filter-optional computers are placed in areas where library employees may observe what the patron is viewing.

Patrons also may request a particular site be unblocked, but only if the site does not include “obscene or sexually explicit material.” A site will be reviewed for content before it is permanently unblocked from the filter.

If a patron violates the policy, library officials may terminate or limit that person’s computer or Internet access; dismiss the patron from the premises; or suspend the person’s access to library facilities for a set period of time. The library also reserves the right to contact the local police if necessary.

Before the policy was adopted, members of the audience spoke to the Board about the filtering issue—one of those being Ron DeHaas, owner and operator the locally-based company Covenant Eyes that sells Internet filtering software.

“It should be evident to you that the citizens are watching,” DeHaas said. “It should also be evident that if this policy is not implemented effectively, the vote to continue funding the library would be heavily influenced by that failure. This vote, scheduled to take place in 2011, could even be moved up to 2010 by petition.”

Ovid resident Bill Newman likened the issue to smoking. “It’s legal for me to smoke, but can I smoke in the

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library?" he said. "It's legal, but society says it bothers too many people and it hurts young kids. I suggest everyone get a pack of cigarettes whether you smoke or not and every time you see something offensive on a computer light one up." Reported in: *Owosso Argus-Press*, November 13.

### **Farmington, Minnesota**

Twenty years after the band Nirvana released its first album a District 192 review panel has decided a book about the band's lead singer is inappropriate for elementary and middle school students.

The panel reviewed the book, *Kurt Cobain*, November 4 after the parent of a Riverview Elementary School third grader filed a complaint. The book is from publisher Edge Books' Rock Music Library series of books. According to administrative services director Rosalyn Pautzke, a member of the review panel, it is geared toward students from ages 12 to 15.

Pautzke said most on the review panel found the book's material too dark for the elementary-age audience it was presented to. The first image inside the book's cover is a glossy, full-color image of Cobain's body being wheeled out of his home following his suicide in 1994. That might have come as a surprise to the third grader who had reportedly picked out the book because he was looking for something about guitars.

"This book . . . was very dark and violent and made reference to the use of Ritalin as being a precursor to the use of illicit drugs," Pautzke said. It also covered topics such as mental illness and suicide. "It was just very graphic and gave a feeling of doom and despair," Pautzke said. "It was really a downer."

Pautzke said even the book's glossary was depressing. "It really wasn't about guitars and it wasn't about music," Pautzke said. "It was almost a bait-and-switch."

The panel discussed the book for about an hour before making its decision. The only panel member who voted against removing it from the Riverview Library was a last-minute fill-in, Pautzke said.

There was a unanimous vote after the complaint was upheld to apply the removal to all elementary and middle school libraries. Pautzke said there was concern the book might be more dangerous for older students, who would better understand its references to drug abuse and suicide.

This was just the fifth challenge to a library book in the 14 years Pautzke has been in the district, and it is the first to be upheld. The first three complaints were withdrawn during the panel's discussion, Pautzke said. The fourth, which came in March of this year, concerned the book *And Tango Makes Three*, about a same-sex penguin couple at the Central Park Zoo that hatched an egg and raised the baby penguin. That challenge was rejected. Reported in: *Farmington Independent*, November 12.

### **Greensboro, North Carolina**

After 89 people were caught viewing pornography on public computers at the Central Library in the first six months of 2009, the Greensboro Public Library has taken action to make it more difficult to load porn sites.

Greensboro Library Director Sandy Neerman in November received new complaints from a homeschool parents' network after a member said she observed a patron at the Kathleen Clay Edwards branch viewing porn on a library computer. In that instance, the library staff did not witness the act. Library associate Dwayne Eaker said the mother was so vocal in complaining to librarians that she may have "tipped off" the violator to switch screens.

Internet porn viewing is a hot enough issue on the library system's 227 public computers that the city this year quietly purchased a device that identifies porn sites and makes them load so slowly that they are difficult to view.

At Central Library between January and July, security guards caught 89 card-carrying patrons viewing pornography on the computers. Most of the patrons caught viewing porn at the Central Library would have received an initial warning that they were violating the library's "acceptable computer use" agreement.

Kimberly Romie, whose Piedmont Homeschoolers Association members have increasingly complained about the problem, said some parents have stopped taking their children to the library. "We're talking about some really hardcore, gross stuff," said Romie, who had three such experiences at the library and has heard similar accounts from other parents. "My total issue is that it should not be allowed. Someone cannot stand over them the whole time. A child or a mom is going to end up walking in on this. And once you see it, you've seen it."

Neerman said that Internet filters do not work, and that a large part of objectionable material derives from popular social networking sites such as YouTube or Facebook, or even attachments to e-mail, which would not be practical for the library to block.

So until recently, the Greensboro system relied solely on monitoring by staff and its private security guards to combat pornography use from using bandwidth that costs taxpayers \$1,200 per month.

Under the library's policy for using its computers, anyone caught breaking the rules is told to stop. If that warning is ignored, the penalty is a one-day ban, then a 30-day ban for the next infraction, and finally, a trespassing charge.

But even prior to the arrest last summer of a Greensboro man caught viewing child pornography on a public computer at Central Library, Neerman's technical staff was privately testing another solution. A device called a "bandwidth shaper" is designed to identify Web sites by categories — including pornography — and allow the library to throttle access down.

When the device finds a computer streaming video from a porn site, the bandwidth is slowed to 1 kilobit per second

— slower than old-fashioned dial-up — which would cause the screen to give an error or timed-out message. “It’s not filtering it,” said Tommy Joseph, manager of technology and reference at the library. “It’s discouraging it.”

One of the difficulties of filters, Joseph said, is that they limit access to research. For example, the explicit, now-defunct porn site [whitehouse.com](http://whitehouse.com) was just a few keystrokes away from the official site, [whitehouse.gov](http://whitehouse.gov). Conversely, a filter could prevent someone from retrieving legitimate research detailing breast self-examination techniques, for example, or prevention of sexually transmitted diseases.

But in a background paper being prepared for the City Council, Neerman’s staff has weighed the pros, cons and costs of various filters, including the \$23,000 Websense filter used at City Hall and the \$8,000 Cmyphonix bandwidth management system now in place.

“There is no arrogance here about thinking we’ve solved this,” Neerman said. “It’s an institution, but also, what is the community standard, and what are they willing to support? It’s a balance you’re weighing all the time.”

Defining pornography and acceptable Internet use is just one part of that balancing act, perhaps not the most difficult. At Central Library alone between January and July, there were 102 cases of loitering reported, 72 cases of disorderly conduct and 21 trespassing cases. For a large public building in an urban area, with more than 1.1 million visitors per year, in the midst of an economic downturn, the numbers might not appear excessive. That is, until the word “library” is mentioned.

“People’s idea of a library is of a safe place,” agreed Jennifer Worrells, library Web manager, “and we do have a strong commitment to children’s programming. But it’s not a place to drop off your children as a safe place.”

That is not lost on parents. “It’s the panhandlers, the parking garage, and now this pornography thing. I feel OK going in there myself, but not with the children,” said Mary Mullins, mother of two grade-school students. She frequents the Greensboro Cultural Center after school, but no longer takes her family to the Central Library. “Bottom line? It doesn’t feel safe.” Reported in: *Greensboro News & Record*, November 15.

### Pataskala, Ohio

An area woman wants the Pataskala Public Library to toss out a book she considers obscene. The book is Eric Marlowe Garrison’s *Mastering Multiple Position Sex*, billed on its back cover as a lovemaking guide. Pataskala resident Marti Shrigley said she saw the book on display while visiting the library and found it offensive. The cover contains seminude pictures of adults, and there are instructive illustrations inside.

“This, to me, is porn, under the guise of a learning manual,” Shrigley said. Shrigley, who has three grown children and six grandchildren, said she originally wanted the

library to move the guide out of the eyesight of youngsters. However, after much thought, she said she now wants the library to get rid of the book altogether.

“I am hard-pressed here,” she said. “We can hardly mention the name God in our schools, but we can have this in our libraries.”

Shrigley has approached everyone from Pataskala Mayor Steve Butcher to Pataskala Police Chief Chris Forshey about the book. Her efforts, thus far, have proved fruitless. Shrigley took her campaign to Matt Nojonen, director of the public library, and appealed to the library’s board of trustees. The board, however, voted unanimously in November to maintain the book in the library’s collection.

Nojonen, when asked about Shrigley’s complaints, said he offered to shelve the book—after she returned it. Shrigley has checked out the book, and she said she has no intention of giving it back to the library. Instead, she said she will pay the overdue fines

“The Lord slapped me in the face with this book,” she said.

Nojonen said, “We have similar items that have been borrowed many times by patrons. There’s nothing illicit about them. It’s a legitimate form of inquiry. People have questions about sexuality, and we feel it’s our role as a public library to provide information to our community and our users.”

Nojonen selected the book, and he said he was swayed by Garrison’s credentials—as a sexuality and relationship educator, Garrison has made presentations to hospitals, universities, medical schools and fraternities and athletic teams—and the fact the guide stresses responsibility and loving relationships.

The library offers other items related to sexual education, and it is not alone. An online search of various collections revealed literally dozens of books related to the subject.

Still, Shrigley wants Garrison’s book removed from the Pataskala library, and she said her campaign is not about censorship: She is concerned about youngsters getting their hands on the book.

“This is not about censorship, because I believe in America we have the right to read and see whatever.”

Shrigley also wants the library board to appoint a committee to help Nojonen select materials in the future. Nojonen maintains the library strives to balance its collection with items patrons want.

“We work hard, and I take very seriously our responsibility to provide a balanced view of topics,” he said. “It’s not my job to determine for a community what it should read. I provide alternatives. People then make choices.” Nojonen added that the book Shrigley objects to has been in circulation for around two months. It has been checked out by adults, not children, he said. No one else has complained about it.

Still, the library is exploring whether to implement a policy that would give parents and guardians control over

what their children borrow at the library. Specifically, the policy would restrict their access to only juvenile materials. Library officials are investigating the legal ramifications of the policy.

Currently, parents or legal guardians must sign permission statements on card applications submitted by minors. Other libraries follow similar policies, and Nojonen said libraries find themselves caught in a Catch-22 because what one parent objects to, another parent might not object to.

"Parental responsibility is the foundation of what does and what does not get borrowed," he said. Reported in: *Newark Advocate*, December 3.

### Sioux Falls, South Dakota

A cartoon anthology filled with teenage angst, four-letter words and some drug and sexual references has been pulled from the student library collections at two Sioux Falls public middle schools. The school district averages about one complaint per year concerning library material, but this was the first time since at least 2001 that a book has been made unavailable to students.

A committee that reviewed the graphic novel said unanimously that it's inappropriate for middle school students. The book's editor says the cartoons are true to life and could help struggling teens and pre-teens understand that they're not alone.

Rather than remove the books from the libraries at Edison and Patrick Henry middle schools, the committee recommended placing them in the staff collections. That means teachers are able check out the books and use them in class. The school board approved the action without comment November 9 as part of the consent agenda.

Published in 2007 by Viking Press, Ariel Schrag's *Stuck in the Middle: Seventeen Comics from an Unpleasant Age*, is the work of 16 cartoonists who recreated true tales from their middle-school years.

The major themes are bullying and boy-girl awkwardness. Masturbation and marijuana show up in passing, and several of the vignettes include words most parents wouldn't want to hear from their children.

"There were two or three of the snapshots where the scenes were a little more edgy, if you will," said Ann Smith, the district's library services coordinator, who convened the committee's two meetings.

Shelly Miller, the mother of a Patrick Henry sixth-grader who filed the complaint, expressed concern about "repeated foul language, sexual references and pictures of teenagers smoking."

Lynn Fjellanger, a committee member and mother of seventh-grade twins, said she's wary of censorship but some of the language and sexual references were inappropriate. Although the stories came from middle school, some seemed tailored to an adult audience. "It seemed that the book was more of an adult's reflection on their middle

school experience," Fjellanger said. "I do want my kids to feel a sense of hope but not maybe in such a graphic way."

Smith, who started her job in 2001, said the last handful of books the school district reviewed were novels. In that long format, the authors have raised controversial issues but resolved them by the end of the book. The graphic novel, at times, leaves students to draw their own conclusions. She said the message a student draws from a cartoon might be a bad one.

As the committee's report put it: "The two or three selections in this book that do contain objectionable language do not have a positive resolution that would offset the language. The committee questions whether most middle school students have the emotional maturity to see beyond the language and infer the message that, if they are facing similar situations, they can survive and become successful, well-adjusted adults."

Schrag found that logic puzzling. The positive resolution to a cartoon is how the reader relates the story to his own experiences, she said. "Not all stories have a happy ending." She suspects the genre made her book an easy target. It's easier for a parent to pick up a graphic novel, page through and find objectionable images than to scour a traditional book for offensive words.

"I think a prose book that would have similar content would go unnoticed," Schrag said. "It's a lot easier I think to sort of demonize graphic novels. It kind of comes down to laziness."

Smith said librarians probably chose the book for Edison and Patrick Henry middle schools because it received positive reviews and because it's a good example of an emerging literary genre. Graphic novels appeal to certain students.

"The librarians, I'm sure, thought this was a good option to reach that reluctant reader," Smith said. Reported in: *Sioux Falls Argus-Leader*, November 11.

### Roanoke, Virginia

A controversial novel challenged by the parent of a Roanoke County high school student will not be banned, but school officials have chosen to restrict access to it.

Three copies of *The Perks of Being a Wallflower*, by Stephen Chbosky, a coming-of-age novel written from the perspective of a teenager and containing sexually explicit scenes, will be returned to the shelves of the libraries at William Byrd and Hidden Valley high schools.

The decision, announced at the school board meeting November 12 came after a review by a panel of three librarians. The panel concluded the novel should be available to juniors and seniors. Freshmen and sophomores, however, will need parental permission to check out the book.

*The Perks of Being a Wallflower* ranked sixth last year on the America Library Association's top ten list of most frequently banned or challenged books. The school board has an established policy in place to handle challenges

related to media material. The process includes removing the books from library collections while the review is under way.

John Davis raised a complaint to the principal of William Byrd High School in October after his 16-year-old son brought the book home. An English teacher reportedly loaned her personal copy to a student who shared it with Davis' son. Davis said he became curious about the book's contents when he noticed his son engrossed in reading, which seemed unusual.

The novel contains several issues that resonate with teenagers: drugs, alcohol, tobacco, sex, vulgar language, abuse, abortion and rape. "That realism is one reason the book connects with the modern reader," according to the panel's report.

But the panel argued that the value of the novel's deeper message outweighs the "graphic" content. The main character, Charlie, strives to find a place to fit in (albeit among the outcasts) and in the process he finds himself. "The committee gave this concern careful consideration and we feel their recommendation is appropriate," said Superintendent Lorraine Lange.

Cave Spring District school board representative Fuzzy Minnix disagreed with the ruling to keep the book in the schools. "There is a moral obligation I feel like I have to stand up for," he said. "There are certain parts of literature, in my mind, that don't support healthy, in good taste, moral, sound education to prepare our students to go out into the world."

Jerry Canada, who represents the Hollins District, said he read the book and then put his faith in letting the librarian

panelists decide whether it should stay or go. "If you really, really want to know what that book is about I challenge you to read it cover-to-cover and see if it changes your mind," Canada said. Reported in: *Roanoke Times*, November 13.

## **schools**

### **Newman, California**

A school district which found itself in the national spotlight and was widely criticized for pulling a controversial novel from its high school curriculum in early 2009 has cracked open a new chapter of book debate.

*I Know Why the Caged Bird Sings* may prove to be the sequel to the *Bless Me, Ultima* saga in the Newman-Crows Landing Unified School District.

The Maya Angelou autobiography was on a required reading list presented by the Orestimba High English Department for school board consideration October 19. The book drew the notice of Board President Derek Solano and prompted questions from Trustee Barbara Alexander about whether other selections might be more appropriate.

In her pointed comments, Alexander also questioned the qualifications of Orestimba staff to teach a novel depicting African American culture. No formal action was taken, as the entire reading list was tabled after a circuitous discussion which also wandered into a dialogue on the high school's Advanced Placement program's performance and philosophies.

But the reading list was back on the board agenda November 9—and additional discussion on that book and

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potentially others was in the cards.

“From the response of the board Monday night, we are expecting that at a minimum there will be questions,” English Department Chairperson Catherine Quittmeyer said.

Alexander had the most pointed comments critical of *Caged Bird*, saying more positive titles—such as *The Autobiography of Miss Jane Pittman*—are available. She also questioned whether local educators have the background necessary to teach the novel.

“There are no African American teachers in our classes. Maybe, just maybe, we need to think these things through when we’re doing cultural experiences,” said Alexander, who repeatedly stressed that she was not trying to ban the book. “I can’t walk in your shoes, and you can’t walk in mine,” she told Quittmeyer. “You don’t have the background to teach this book.”

“I can’t speak as an African American woman,” Quittmeyer countered. “I can speak from the perspective of a woman. Some of the things she speaks of are not unique to African American women.”

The curriculum includes literature reflecting a broad range of cultures, Quittmeyer said, and whatever their own backgrounds the staff effectively teaches those novels. “We’re trying to bring a multi-cultural experience, because that’s one of the standards,” she explained.

In a later interview Alexander defended her concerns. *Caged Bird* is full of violence, she said, including a rape scene. Alexander, who is African American, said many other novels could be selected which depict positive stories of the culture. “Our children need to hear more than negative,” she stressed.

Alexander also reiterated her concerns about how the novel would be taught. “I don’t believe there is a teacher qualified to teach *Caged Bird*, because you are teaching it to a mixed group of students and you have to try to teach it to each culture,” said Alexander.

Solano, at the start of the debate, pointed out that *Caged Bird* was not among the materials which the board had been given a month earlier, and therefore he had not had the opportunity to research the book and content which may be objectionable.

Quittmeyer said that in September she had presented only a list of books with supporting documentation for freshman English. The limited list was meant as a sample illustrating the format for presenting the information before the entire reading list was prepared. *Caged Bird*, she pointed out, was on a pacing calendar submitted with the sample list.

The complete list of required reading materials for the high school English department was presented as part of the board agenda. Each title included a summary of the novel, a rationale for including it in the curriculum, an explanation of the standards met by each novel and a notation of anything which might be controversial.

Quittmeyer does not dispute that *Caged Bird* is a

controversial novel, saying she would have expected that book to be challenged before *Bless Me, Ultima*, an acclaimed book which the board voted to remove from the curriculum last year because of the profanity it contained.

In the information presented to the board, the rationale for *Caged Bird* cautions that the novel contains descriptions of violence, including sexual abuse and murder, and profanity which includes racial slurs.

“All of this content is presented within the context of Maya’s life. She is honestly and realistically speaking of what she has experienced in life,” the rationale reads. “The coming of age memoir gives personal insights into contemporary societal issues and events, including prejudice, tolerance, the civil rights movement, migration, Prohibition and the culture of the South.”

Superintendent Rick Fauss said he anticipated the board’s decision to table the reading list, which gives trustees time to fully review the 40 or so titles it contains. He said he expects discussion on some of the titles on the list, including *Caged Bird*. That discussion, Fauss said, would be in the context of how the novels fit into the new curriculum being implemented in the high school English curriculum.

Teachers voiced their worries in the midst of the *Bless Me, Ultima* controversy that other valuable novels could also be removed from the curriculum. “We are concerned,” Quittmeyer said. “If they really want to look at the books, I hope they take the time to read them, because anything can look bad in isolation.” Reported in: westsideconnect.com, October 26.

### **Saugus, California**

A local parent is challenging the Hart district over two books assigned in an honors English class at Saugus High School, saying the books’ vulgar language and sexual accounts are inappropriate for high school students. The William S. Hart Union High School District responded by forming a committee to analyze the books and make a recommendation.

Laura Riddle said her 14-year-old Saugus student expressed concerns about *The Glass Castle*, which was required summer reading for the honors English program.

*The Glass Castle* is a 2005 memoir by Jeannette Walls that chronicles Walls’ harsh childhood and family life. The book includes profanity, criticisms of Christianity and accounts of sexual abuse and prostitution.

Riddle is also concerned about *The Bean Trees*, another book assigned in the honors English class, which is a 1988 novel by Barbara Kingsolver that includes sexual scenes and vulgar language.

“I just felt that those things were not in place at school,” Riddle said. “I think we have to remember that (students are) not adults and that we have to be very careful with what we’re assigning them. They’re still forming opinions.”

While both books are approved by the district, Saugus High School Assistant Principal Martha Spansel said students have the option of alternative assignments that still meet objectives and teaching goals.

Riddle's concerns led her to file formal challenges with the Hart district. Since finding out about the two books, Riddle said she's talked to other Hart district parents and has gathered a total of seven formal challenges to *The Glass Castle* and four to the *The Bean Trees*.

"I really hope the district will look more carefully at the books," Riddle said.

The formal challenge, which is rare for the Hart district, requires it to form a committee made up of an administrator, parent, teacher, department chair and librarian to formulate a report on the book and how appropriate it is for a school setting, Saugus High School Principal Bill Bolde said.

Riddle also wants parents to be more informed about what students are reading. "There should be a letter sent home," she said. "I think it should be up front." Reported in: *Santa Clarita Valley Signal*, November 1.

### Montgomery County, Kentucky

A dispute over books at Montgomery County High School has embroiled parents, teachers, students and others over the past several months, extending to authors and censorship groups at the national level.

The continuing ruckus revolves around contemporary, young-adult novels that have been used in conjunction with classical works like *The Canterbury Tales*, by Geoffrey Chaucer, and the epic poem *Beowulf* in some sophomore and senior accelerated English classes.

Some parents have complained that the novels contain foul language and cover topics — including sex, child abuse, suicide and drug abuse — unsuited for discussion in coed high school classes. They also contend that the books don't provide the intellectual challenge and rigor that students need in college preparatory classes.

Montgomery County School Superintendent Daniel Freeman has responded by withdrawing about half a dozen of the challenged titles from classroom use. However, students can still find them in the high school library, and they remain available through a student book club.

The situation sparked a spirited exchange of letters to the weekly *Mount Sterling Advocate* newspaper, with some writers branding the challenged books as "trash" and others raising cries of "censorship."

The author of one disputed book weighed in with a protest letter. Officials of national anti-censorship groups wrote Freeman raising First Amendment concerns; and references to the spat have turned up on some authors' blogs.

Kentucky Education Association President Sharron Oxendine said things reached the point where she fears that Risha Mullins, the English teacher who introduced the books, could lose her job.

"She is untenured, so they could simply not renew her

contract," Oxendine said. "That's what can happen when a teacher becomes controversial. It's a shame because she's done so much to turn kids on to reading at a time when we're practically begging children to put down their video games and read."

Freeman said that Mullins' job status "has not even been discussed."

Mullins received praise last year for launching the student "Moo Moo Book Club" at Montgomery County High School. She also has arranged for students to visit the Holocaust Museum in Washington, and to attend a workshop at Virginia Tech University with nationally known poet and educator Nikki Giovanni.

But parents who challenged the books used by Mullins insist that censorship is not their aim.

"It's not censorship when you make wise decisions about what can be used in the classroom," parent Cyndi Murphy said.

The challenged books include *Twisted*, by Laurie Halse Anderson; *Deadline*, by Chris Crutcher; *Lessons from a Dead Girl*, by Jo Knowles; and *Unwind*, by Neal Shusterman.

The titles appeared on suggested book lists compiled by the Young Adult Library Services Association, a division of the American Library Association, for 12- to 18-year-olds who are "reluctant readers." Some also have made suggested or required summer reading lists at various middle schools and high schools around the country, including some religious schools.

Sheila Sterling, a parent who has two children in Mullins' classes, says she's read several of the books and doesn't understand what all the fuss is about.

"I haven't found one of the books that offends me or that I would not let my daughter read," Sterling said. "I grew up an avid reader and no one ever restricted what I could read. Nobody has to read these books if they find them offensive." Sterling and others noted that students in classes where the disputed books were offered could opt out of reading them and select other titles if they chose.

But Nancy Cooper, a parent involved in the protest, contended that in practice many students might hesitate to opt out, even if they found a book objectionable. "If there is a book and I think my parents won't like it, I'm probably not going to say so because I'm sitting there with my all peers," Cooper said. "You don't want to be the one who is different."

Cooper, who is a teacher, said parents objected, not just to the language and themes in the books, but also to their literary quality. She said she couldn't find any of them on college-bound reading lists.

"The reading levels on these books are fifth-grade and sixth-grade, but we are talking about accelerated, college-bound classes," she said. "It's a matter of what is appropriate in academics. We didn't ask for the books to be taken out of the library, or for them to be removed from the book club. We are saying that we think there are more appropriate and



better reading materials available for college preparation.”

Chris Crutcher, a Washington State author whose book, *Deadline*, was among the first to be challenged, acknowledged that his works are controversial. But he maintains that they offer valuable lessons for young readers. Crutcher, who wrote a letter to the Mount Sterling paper about the book protest, said he bases his books on real-life examples he’s seen as a child-abuse-and-neglect therapist and teacher in an alternative school.

“Almost any reading teacher or English teacher will tell you that the more books you read, and the more conversations you have about how they were written . . . it is going to help you in any English class you take in college,” Crutcher said. “It’s silly to think that only Shakespeare and *Wuthering Heights* are going to be helpful in college.”

Meanwhile, Freeman, the school superintendent, contends that many who have protested his withdrawal of the books are misinformed. “They seem to think the books were taken out of the library or that kids aren’t allowed to read them, which isn’t true,” he said. “I really think some people don’t understand what the issue is.”

Freeman says that as of now, he has told high school staff and faculty that the challenged books are not part of the approved curriculum, and shouldn’t be used in class.

“I wrote the teachers over a month ago and said, ‘show me why the books should be in the curriculum and we’ll reconsider that decision,’” he said. “I’m certainly not the world’s final authority on what ought to be in a college curriculum. But so far I haven’t heard a word from anybody about why we should use these books.” Reported in: *Lexington Herald-Leader*, November 29.

### **Wichita Falls, Texas**

*The Egypt Game* is part of a reading list in a fourth-grade class at Southern Hills Elementary School. Some parents have a problem with the reading selection. The book has been an optional part of the Wichita Falls School District’s curriculum for years. However, the Turnbow family said they won’t stop until the book is banned.

It’s a Newbery Award-winning story about a group of children who invent a game involving Egyptian gods, but the Turnbows said its not a game they want their child knowing about. Dandi Turnbow, the student’s mother, said her fourth grade son was given the book to read in his class at Southern Hills Elementary. Their son read a few chapters of the book when they discovered some passages that disturbed them: including scenes depicting Egyptian worship rituals.

“I let him know this is not what we believe at all and this is not anything he needs to be subjected to,” Dandi Turnbow said.

School District Officials said curriculum specialists have reviewed the book and find it appropriate, but the school honored the parents’ wishes and allowed the student to select a different book. The Turnbows said giving their

son a new book isn’t enough for them. They want the book banned altogether.

“The school understands that the parent objected. There were four students who chose the book. He was the only student that had an objection that came forward,” said Renae Murphy, the school district’s information officer.

“I’m not going to stop until it’s banned from the school district. I will not quiet down. I will not back down,” said Jeff Turnbow, the student’s father.

District officials said they try to honor parents’ wishes, but there is a formal process to request a district-wide book ban. “As far as the situation with this child. It has been resolved. We do have a formal approval process in place if that parent wishes to ban it from all children, but the request is for their own child,” Murphy said.

“I also hope that it gets banned because I don’t believe any student should be subjected to anything that has to do with evil gods or black magic,” Dandi Turnbow said. Reported in: *kauz.com*, November 11.

## **student press**

### **Sumerville, Georgia**

Some Chattooga High School students paid \$50 in advance for their 2009 yearbook, but when they picked it up in late October four pages were cut out, literally. They were told the pictures were inappropriate.

The 2009 yearbook was delivered to students, two months late with pages 11–14 clipped out. The books arrived at Chattooga High in early September, but only went those students who had purchased them nearly two months later. On page 10, you see part of a girl’s head, next to an unrelated page 15. What happened to the pages in between?

2009 grad Aaron Wentz said, “I was real upset, looks like it was done with a box cutter, you can’t miss it. It’s been mutilated. I paid for it in advance, it’s my property and the school has taken it upon themselves to rip it up.”

The yearbook was dedicated to former Chattooga teacher Dr. Alan Perry, who supervised the yearbook for the past 27 years. After he retired in May, a new principal and yearbook advisor didn’t like what they saw: photos of shirtless boys playing basketball. So before distributing to students, they began the two-month process of cutting pages 11–14 out of every yearbook.

Dr. Perry, who was able to obtain an original, uncut version of the yearbook, posted the pages on his Facebook site. He said, “I’m very disappointed with the decision to mutilate a wonderful yearbook—a decision that was completely unnecessary. There was absolutely nothing inappropriate about the pages that were cut from the book; I am offended by the lack of regard shown for the students pictured on those pages, the students who worked on the yearbook staff last year, and most of all, the students who purchased the yearbook.”

2009 graduate Marcus Lee said, “They have stolen our memories. I have several friends on those pages, and they deserve to be in the yearbook. These pictures are not appropriate. They are good guys, just playing ball without their shirts on, and there are other pictures in this yearbook of guys without shirts. You show these pictures to anyone, they wouldn’t see anything offensive.”

New principal Jimmy Lenderman, who took over the school in July, after the yearbook went to press, told reporters, “Inadvertently, the school administration did not approve the 2008–2009 yearbook in its entirety; there were several photographs that did not reflect an appropriate image of the school or our community. The pages which contained the photos were removed.” He declined further comment.

Lenderman confirmed that he offered to refund the full purchase price to anyone who returns the yearbook, but parent Beth Wentz says, “No deal. The right thing to do would be to give a new book with all the pages in it. These pictures are no worse than anything I’ve seen in other yearbooks, ever since I was in school 30 years ago.”

Chattooga Co. Superintendent Dr. Dwight Pullen, said he supports the principal’s decision. “Mr. Lenderman is trying to improve the image of the school, and the academic programs of the school. He has it headed in the right direction.”

But Wentz disagrees. “They had no business cutting up everybody’s yearbook over some pictures of boys without shirts. These students will keep these books the rest of their lives, and they shouldn’t have to pay for, and keep a yearbook that has been cut up and mutilated, losing pictures of their friends and school activities. A young person only gets one senior yearbook, and this school has ruined it for them.” Reported in: *wrcbtv.com*, November 2.

### **Lincolnshire, Illinois**

Administrators at Stevenson High School in Lincolnshire spiked the November 20 edition of the school’s award-winning newspaper because of concerns about stories on drinking and smoking by honor students, teen pregnancy, and shoplifting, the editor said.

Advocates of press freedom bashed the decision to halt publication. “It is irresponsible to withhold this information so they can protect their fantasy image of Stevenson as a place where no one has ever gotten pregnant or shoplifted,” said Frank LoMante, executive director of the Virginia-based Student Press Law Center.

The ban was the latest rift between administrators and student journalists for the *Statesman*, regarded as one of the premier student newspapers in Illinois and the nation. Concerns about content last year led to the resignation of the paper’s faculty adviser, Barbara Thill.

In the most recent incident, administrators on the paper’s review board warned editor Pam Selman, a senior, not to

submit a front-page story by senior managing editor Evan Ribot about students in the National Honor Society and freshmen mentors program. In it, two students, quoted anonymously, admitted to drinking and smoking, which are prohibited under the society’s no-use contract.

The administrators warned that they would ask for the students’ names and potentially take disciplinary action against them, Selman said. Rather than revealing their sources, the paper’s staff decided to submit a blank front page to the board, she said, with a note to readers about why the story wasn’t there.

The next day the paper’s advisers told staff the administrative review board had problems with the blank front page—plus the pregnancy and shoplifting stories—and would spike the issue. Administrators said the teen pregnancy story lacked balance, Selman said.

The story by Selman quoted a boy and girl at the school who are expecting a child together, she said. The school has seen an increase in student pregnancies this year, Selman said.

LoMante is advising the paper on its legal options and was given copies of all three stories the administration deemed unfit for print. “They are balanced, responsible and mild,” he said. “They carry positive messages: Don’t shoplift, and get counseling if you get pregnant.”

The paper’s staffers greeted students by the entrances, as they usually do when the paper comes out every third or fourth week, Ribot said. But instead of saying “Take a Statesman,” they declared, “Sorry, no paper today” and explained why. Reported in: *Chicago Tribune*, November 20.

## **publishing**

### **Hollywood, California**

It is one of the most celebrated images in cinema, an icon of heterosexual romance: Burt Lancaster and Deborah Kerr kissing as the waves crash over them in the 1953 film *From Here to Eternity*. But behind the Hollywood gloss is a tale of censorship and repression, with the author of the award-winning novel on which the film was based forced to remove scenes of gay sex from the manuscript before publication.

Kaylie Jones, a novelist in her own right, says her father, James Jones, was told by his publisher Scribner to eliminate both expletives and homosexual scenes in *From Here to Eternity*, which was based on his own experiences in Hawaii in the army on the eve of the Pearl Harbour bombing.

The original manuscript of the novel went into “great detail” about the kinds of sexual favours soldiers like Private Angelo Maggio, played in the film by Frank Sinatra, would provide to rich gay men for money, Kaylie Jones revealed.

“I don’t like to be blowed [by a man],” the novel’s hero

Private Robert E Lee Prewitt tells Maggio in a section cut from the novel. “Angelo shrugged,” writes James Jones. “Oh, all right. I admit it’s nothing like a woman. But it’s something. Besides, old Hal treats me swell. He’s always good for a touch when I’m broke. Five bucks. Ten bucks. Comes in handy the middle of the month . . . Only reason I let Hal blow me is because I got a good thing there. If I turned him down I’d blow it sky high. And I want to hang onto that income, buddy.”

James Jones initially refused to cut the expletives from his novel, writing to his Scribner editor that “the things we change in this book for propriety’s sake will in five years, or ten years, come in someone else’s book anyway . . . and we will wonder why we thought we couldn’t do it. Writing has to keep evolving into deeper honesty, like everything else, and you cannot stand on past precedent or theory, and still evolve . . . You know there is nothing salacious in this book as well as I do.”

He then agreed to cut a “certain number” of uses of the word fuck from the book, his daughter wrote, “in part because there was a question whether the US postal system would even deliver the book to stores because of its ‘salacious’ nature,” although 32 still remain. But he refused to eliminate the homosexual scenes in their entirety “because he felt this would be unfaithful to reality he witnessed,” although they were extensively cut back when it was published in 1951.

James Jones, she wrote, “believed that homosexuality was as old as mankind itself, and that Achilles, the bravest and most venerated fighter ever described, was gay, and to take a younger lover under your wing was a common practice among the soldiers of the time. He also believed that homosexuality was a natural condition of men in close quarters, and that it in no way affected a soldier’s capabilities on the battlefield. What would have amazed him is that the discussion still continues to this day, cloaked in the same hypocrisy and silence as it was 60 years ago,” she wrote.

Kaylie Jones said that she decided to divulge the details following the recent death of her mother. “She didn’t think this was relevant,” Jones said. “Now that I’m executor of the literary estate with my brother, we think it’s relevant given the Don’t Ask, Don’t Tell controversy in the American military [and] the Maine same-sex marriage vote.”

“In some ways,” she continued, the original novel was “a better book. The gay passages are not what I’d cut from the book. If we published a new edition, I would include them,” she said. *From Here to Eternity* won America’s National Book Award on publication in 1951, while the 1953 film won eight Oscars.

Publishers at the time, according to Kaylie Jones, were under pressure from a Catholic group called the National Organisation for Decent Literature, which objected to “the lascivious type of literature which threatens the moral, social and national life of our country” and blacklisted *From Here to Eternity*. Its members would visit booksellers

with lists of “harmful” titles, informing the shops’ managers if they found them in the stores. “The result? Widespread intimidation and boycott of booksellers,” she wrote.

“Things are much better now for writers,” she said. “I think my father paved the way for many writers. He made the literary world safe for the F word.” Reported in: *Guardian*, November 13; *dailybeast.com*, November 10.

## New York, New York

Scholastic Books reversed its decision to censor Lauren Myracle’s controversial *Luv Ya Bunches* (Abrams/Amulet, 2009) from school book fairs and will make a slightly sanitized version of the title available at middle schools in spring 2010. The novel, however, still won’t be for sale at elementary fairs—even though it specifically targets that age group.

Scholastic announced the news on its corporate blog October 27 but failed to explain why the book was blocked in the first place. The company did, however, say that it was “committed to a review process that considers all books equally regardless of their inclusion of LGBT (lesbian, gay, bisexual, transgender) characters and same-sex parents.”

Myracle said she’s pleased by Scholastic’s message of tolerance. “I give props galore to the folks at Scholastic Book Fairs. Tolerance and acceptance are pretty awesome messages to send the world.”

Parenting blogs, as well as those in the gay and lesbian blogosphere, were up in arms following a report that Scholastic told Myracle it wouldn’t carry *Luv Ya Bunches* at its fairs after she refused to alter her plotline by replacing a homosexual couple with a heterosexual couple. And the controversy quickly gained national attention, even prompting Conan O’Brien to poke fun at it during his opening monologue on the “Tonight Show.”

Myracle did make changes to the book’s language, explaining she was comfortable with the trade-off of toning down some language in exchange for making the book accessible to more readers. As a result, Scholastic’s book club division said it would carry the cleaned-up version for sale in its catalog, but the book fair division refused, citing the lesbian parents of one of the main characters, Milla, as the reason.

Kids who purchase Scholastic book club’s exclusive paperback edition, for example, will read Quin saying, “Geez, Milla, you carry around so much junk,” while those who buy the original hardback novel in bookstores will read her saying, “Geez, Milla, you carry around so much crap.” The changes were requested before publication of the hardcover edition on October 1 so that book clubs would have enough time to publish their own exclusive paperback.

While Scholastic says its about-face on the issue was strictly an internal decision, Change.org, a blog network that promotes social change and advocacy, took credit. The organization reported that its members delivered more than

4,000 online petitions urging the company to change its mind about excluding the book from its popular fairs simply because it features two moms raising a child. The petition was launched by Michael Jones, communications director for the Human Rights Program at Harvard Law School.

Robin Beck, organizing director of Change.org, said he, along with a representative from the Gay & Lesbian Alliance Against Defamation (GLAAD), had numerous e-mail exchanges with Scholastic spokeswoman Kyle Good about how to resolve the issue. Beck believes the company's new stance on the issue would not have come about if "we didn't call them out on this."

In the end, Beck said Change.org was pleased with the results, but there's still a lot of concern that this "small gesture" isn't enough. "There are certainly people within the community who feel that Scholastic has not yet admitted any sort of mistake or apologized," said Beck, adding that the issue is still very much alive. The ultimate goal, he explains, is to sell *Luv Ya Bunches* at elementary fairs and to have Scholastic apologize to the author. Good says there are no plans at the moment to review whether the book will be sold at elementary fairs.

The decision to carry the book at middle school fairs, however, immediately prompted protest from a different direction. The Illinois Family Institute, whose motto is "Upholding marriage and family, life and liberty, in the land of Lincoln," immediately called for a boycott of Scholastic.

"IFI is urging parents to notify your children's schools that because *Luv Ya Bunches* is listed in the Scholastic Book Club catalogue, the catalogue is not to be distributed to your child and that you will not be ordering any books from Scholastic Books," Institute Director Laurie Higgins wrote on the group's website November 2.

She also asked parents to "notify your children's school that if *Luv Ya Bunches* will be included at the Scholastic Book Fair, your child is not to be taken to the fair during or after school hours. Finally, call the Scholastic Books feedback line and send emails to Scholastic Books management to inform them that as long as they are carrying books that

affirm homosexuality as moral, you will not purchase books from them." Reported in: *School Library Journal*, October 30; [illinoisfamily.org](http://illinoisfamily.org), November 2.

## music

### Cupertino, California

An automated censoring service has left Apple Corporation's iTunes embarrassed after it censored "doo wop" to "doo w\*p," confusing consumers, including Radio 2 DJ Jeremy Vine.

When Vine mentioned in passing to fellow DJ Ken Bruce that he was surprised to find iTunes had censored an album he wanted, it caused an on-air stir.

A search of iTunes revealed that the asterisk substitution did not apply only to the 1950s genre, but to any track or album that mentions the racial slur wop, including Lauryn Hill and, those famously inflammatory artists, Prefab Sprout.

Adam Howorth, Head of Music PR at iTunes, said the asterisk was imposed by an automated database that checks words against a list but can't distinguish the context. "We have an automated system which looks for potentially off words and asterisks out certain ones based on the rules, and wop is one of those," says Howorth. "In the context of this music it is an error."

While the system may go too far in one direction, it also seems to have failings in the other. Honky, a term that mocks white people, is also part of the term "honky tonk," played in American piano bars in the early twentieth century. There are still many tracks, by acts like Jools Holland, the Rolling Stones, James Brown and the Beach Boys with honky tonk in the title. But the word honky, despite being on iTunes banned list, remains uncensored. Howorth wasn't sure why honky has passed censorship when doo wop hadn't.

It's not the first time iTunes faced criticism for unnecessary censorship. Last year "a database glitch" was deemed responsible for censoring a plethora of artists and titles including Girls Aloud's "Long Hot Summer" and Avril

**SUPPORT  
THE FREEDOM  
TO READ**

Lavinge's "Hot," the problem being "hot" was too, well, hot to handle. Reported in: *Guardian*, November 6.

## prisons

### Washington, D.C.

The American Civil Liberties Union demanded November 12 that the Bureau of Prisons (BOP) release all records in its possession related to attempts by prison officials to purge from federal prison chapel libraries any religious material arbitrarily deemed to be unacceptable.

The demand, articulated in a letter sent to the U.S. Department of Justice's Office of Information and Privacy, followed the failure by BOP officials to adequately respond to a Freedom of Information Act (FOIA) request filed last spring by a California graduate student writing a thesis on the censoring of religious materials in federal prisons.

"The refusal of prison officials to provide a full accounting of their rationale for banning religious material is just the latest example of an ongoing effort to secretly and unconstitutionally censor material they consider to be unacceptable," said David Shapiro, staff attorney with the ACLU National Prison Project. "To deny prisoners their constitutional right to access religious materials is bad enough. But to attempt to do so in a way that skirts transparency and prevents the public from knowing what they are doing is entirely unacceptable."

In order to complete his master's degree in religion at Claremont Graduate University in Claremont, California, the student, Joshua C. Harris, is writing a thesis on the 2007 implementation of the Standardized Chapel Library Project (SCLP), which authorized BOP officials to purge from prison chapel libraries any material that was not on a list of "acceptable" publications that the libraries could maintain. Among those titles banned at the time were Maimonides' "Code of Jewish Law."

In order to obtain information about how it was decided what materials would be placed on the list of "acceptable" publications, what materials would be left off and who was charged with making those determinations, Harris filed a FOIA request in April asking for "any/all documents that detail the reasoning behind, and implementation of, the [SCLP]." The SCLP was a major undertaking that surely generated a substantial amount of records, but the BOP's September response to Harris' FOIA request included only four documents.

"The lack of information provided to me by BOP officials has certainly impeded my ability to complete my thesis, but that is only part of my concern," Harris said. "My research is motivated by a general concern for the rights of prisoners, particularly their religious freedoms. Incarcerated populations are especially vulnerable to abuses of power, in part, because prisoner issues, such as the censorship of religious materials, are largely invisible to the public. I'm

concerned that policies directly impacting federal prisoners are being devised and implemented without any public awareness or debate."

The 2007 implementation of the SCLP sparked harsh criticism from lawmakers and religious leaders across a broad ideological spectrum and, in 2008, prompted Congress to pass a provision of the Second Chance Act that allows BOP officials to restrict only those materials "that seek to incite, promote or otherwise suggest the commission of violence or criminal activity" or "any other materials prohibited by any other law or regulation." The Act explicitly forbids any further attempt "by whatever designation that seeks to restrict prisoners' access to reading materials, audiotapes, videotapes or any other materials made available in a chapel library."

Despite the existence of the Act, however, BOP earlier this year proposed a new rule that seeks to restrict prisoners' access to materials in defiance of the law. The watered-down standard in the proposed rule would allow any book to be banned if it is determined that it "could...suggest" violence or criminal activity, regardless of whether there is any intent to cause violence or even a reasonable possibility that violence will result. Works such as the *Bible*, the *Qur'an* and Martin Luther King's "Letter From a Birmingham Jail" could be left vulnerable because, theoretically, they could suggest violence or criminal activity to a reader.

The proposed rule would also allow BOP to ban books that are seen as "advocating or fostering violence, vengeance or hatred toward particular religious, racial or ethnic groups" or books that are deemed to advocate "for the overthrow or destruction of the United States."

In March, the ACLU filed formal comments with BOP's Office of General Counsel opposing the proposed rule. The comments were signed by a diverse coalition of religious organizations including the Baptist Joint Committee for Religious Liberty, the American Jewish Congress and Muslim Advocates. BOP has yet to decide whether it will implement the rule. Reported in: ACLU Press Release, November 12.

## book burning

### Canton, North Carolina

A Baptist Church hosted a "Halloween book burning" to purge the area of "Satan's" works, which include all non-King James versions of the Bible, popular books by many religious authors and even country music.

The website for the Amazing Grace Baptist Church in Canton, claimed "scriptural bases" for the book burning. The site quoted Acts 19:18-20: "And many that believed, came and confessed and shewed their deeds. Many of them also which used curious arts, brought their books together, and burned them before all men: and they counted the price of them, and found it fifty thousand pieces of silver. So

mightily grew the word of God and prevailed.”

Church leaders deemed *Good News for Modern Man*, the *Evidence Bible*, the *New International Version Bible*, the *Green Bible* and the *Message Bible*, as well as at least seven other versions of the Bible as “Satan’s Bibles,” according to the website. Attendees also set fire to “Satan’s popular books” such as the work of “heretics” including the Pope, Mother Teresa, Billy Graham and Rick Warren.

“I believe the King James version is God’s preserved, inspired, inerrant and infallible word of God,” Pastor Marc Grizzard told a local news station of his 14-member parish.

Grizzard’s parish website explains that the Bible is the “final authority concerning all matters of faith and practice,” for Amazing Grace Baptist Church. In the Parish doctrinal statement, Grizzard expounds that “the Scriptures shall be interpreted according to their normal grammatical-historical meaning, and all issues of interpretation and meaning shall be determined by the preacher.”

The event also sought to destroy “Satan’s music” which includes every genre from country, rap and rock to “soft and easy” and “Southern Gospel” and “contemporary Christian.”

David Lynch, a resident of nearby Asheville, said “It’s a little disconcerting how close this is to my home. They are burning so much stuff I’ve dubbed them the hypocritical Christian Taliban. Just the scope of all the information they want to destroy is pretty disturbing.” Reported in: rawstory.com, October 14.

## foreign

### Sydney, Australia

Several popular Penguin classics, including Vladimir Nabokov’s *Lolita*, have been pulled from the shelves of Australia Post retail outlets. *The History of Sexuality*, *The Delta of Venus* and *Lolita* were delivered to some of the 4500 Australia Post stores nationwide but all were sent back. Most did not make it as far as the shelves.

“There’s no criteria. It’s on a case-by-case basis. Like any other product it was purely to fit with our brand and business,” said an Australia Post spokesman, Alex Twomey. “We tend to stock fairly standard middle-of-the-road type products, given that we serve all parts of the community and they’re not the sort of thing we would normally have.”

Australia Post said it did not know how many books reached the shelves and it was unaware of any official complaints. “We’ve got no issue with the books. We are not seeing it as a censorship issue or calling for them to be banned,” Twomey said.

Penguin’s website describes *Delta of Venus*, by Anais Nin, as “a stunning collection of sexual encounters from the queen of literary erotica”. The entry for *Lolita* reads: “Poet and pervert Humbert Humbert becomes obsessed by

12-year-old Lolita and seeks to possess her, first carnally and then artistically, out of love.”

Penguin Australasia’s sales director, Peter Blake, said: “I guess there have been complaints from customers and they have reacted by removing them from sale. Retailers can do what they like.” Reported in: *Sydney Morning Herald*, October 15.

### Jerusalem, Israel

The Israel Ministry of Education has taken the unusual step of collecting all copies of the history textbook, *Nationalism: Building a State in the Middle East*, which was published last summer by the Zalman Shazar Center. They will be returned to the shelves only after corrections are made to the text, particularly with reference to the War of Independence. The book had already been approved by the ministry.

“Collecting the books from the shops is an unnecessary [form of] censorship,” said Dr. Tsafirir Goldberg, who wrote the controversial chapter on the war. “The process of approving the text was completed in serious fashion from both the pedagogic and the historic points of view. The fact that the education minister changed does not mean that it is possible to bypass this procedure.”

On September 22, Haaretz reported that the textbook, which is meant for 11th and 12th-grades, for the first time presented the Palestinian claim that there had been ethnic cleansing in 1948. “The Palestinians and the Arab countries contended that most of the refugees were civilians who were attacked and expelled from their homes by armed Jewish forces, which instituted a policy of ethnic cleansing, contrary to the proclamations of peace in the Declaration of Independence,” states the text, which presented the Palestinian and the Israeli-Jewish versions side by side.

Criticism about the book was voiced by history teachers. “Presenting Israel’s claims as being equal to those of Arab propagandists is exactly like presenting the claims of the Nazis alongside those of the Jews,” one of them said.

On the other hand, another teacher noted that the most important component in studying history is to introduce as many points of view as possible.

Following the newspaper report, Education Minister Gideon Sa’ar instructed the ministry’s director general, Shimshon Shoshani, to examine the book and look into the process of approving texts in general. Officials in the ministry said that an examination carried out by Michael Yaron, who is in charge of history studies, found “a great many mistakes, some of them serious. As a result of this examination it was decided that the original version of the textbook must be withdrawn and returned to the stores only after being corrected.”

Among other things, the Shazar Center was asked to exchange the original Palestinian text that appears in the book, written by Walid Khalidi, for another that is closer

to reality, said Goldberg, who finished making the changes recently. Another demand was that the term “ethnic cleansing” be redacted. Goldberg says that he changed the phrase and spoke instead of an organized policy of expulsion.

When the corrections have been completed, the book will be reviewed again at the publishers and in the ministry, before it is given final approval.

“The state has the right to determine the contents of textbooks but this is not supposed to be done by the education minister,” Goldberg said. He noted, though, that some of the remarks were merely cosmetic and did not pose any problem. “The publishing house decided to make the corrections as a form of self censorship,” Goldberg said.

Zvi Yekutieli, the executive director of the Shazar Center, said that “the book has to be aimed at the widest possible consensus and not at the fringes on the left or the right. We made a mistake and we are correcting it.”

Earlier, Yekutieli said that there had been no remarks about the chapter on the War of Independence during the process of approving the book. He added that “the explicit instruction from the ministry was to include controversial points of view so that the students can confront them and make up their own minds.”

The ministry approved the textbook for use in the schools on July 26, after it had been sent to two external assessors—an academic and a teacher. It was granted approval after an examination of its suitability for the curriculum and its scientific reliability.

The ministry spokesman said that, “From the start the book was intended to go into use as a textbook only from this coming January, so the students were not yet exposed to the relevant material. It was decided as well that the director general’s circular should be corrected to make it clear that the responsibility and authority for approving textbooks is on the inspectors and coordinators who are responsible for the various subjects taught and who have to examine the books before they are approved and pass on their remarks and instructions.” Reported in: [haaretz.com](http://haaretz.com), October 19.

### **St. Petersburg, Russia**

Authorities at St. Petersburg State University issued a statement in late October announcing that researchers in the humanities and social sciences would not be required to submit to an export-control screening before publishing their work overseas, easing fears that new procedures would constrain academic freedom.

Professors at the prestigious Russian university raised objections in early October, when an internal university document was posted on a popular Internet forum. The document called for faculty members to provide copies of texts to be published abroad so that they could be reviewed for violations of intellectual property law or danger to national security.

Some professors responded with alarm, warning that

bureaucratic barriers could hamper their efforts to publish and travel abroad, and fearing the requirement was a step toward greater academic censorship.

A statement released by the university October 30 explained that the export-control procedures applied only to research involving “dual-use technology,” nonmilitary techniques that could have military applications. Russia’s export-control law, passed in 1999, was intended to stem the flow of strategic research out of the country during the chaotic decade after the fall of Communism.

Olga V. Moskaleva, head of the university’s scientific research department, said in the statement that the order “will not in any sense create some ban or limitation on international travel, participation in international conferences or cooperative work with foreign scholars.”

The statement said “intense interest of the media” in the order “apparently stems from insufficient information about the real state of affairs.”

Though scientists have long been subject to export control rules, the St. Petersburg order originally applied to the humanities as well. It asked for copies of grant applications to foreign organizations, contracts with foreign entities, curriculums to be used for teaching foreign students and a list of foreign students, along with their plans of study.

Deans will clear the work for publication or submit it to an internal export control commission for review, said Igor A. Gorlinsky, the university’s vice rector for scholarly and scientific work. The order was issued to clarify a rule that has been on the university’s books for a decade, but that existed “only on paper,” he said. Dr. Gorlinsky added that the plan might be adjusted or streamlined in response to faculty feedback.

He said he did not believe that the order would interfere with professors’ efforts to publish abroad. “One of the psychological problems we’re encountering is that some of our colleagues, instead of reading the documents carefully to understand what will be examined, and for what purpose, are speaking out against any kind of control,” Dr. Gorlinsky said.

“But I don’t think this is a very civilized attitude,” he said. “Any university, including your alma mater, protects its intellectual property and will protect the legal interests” of its country. He said he doubted that work in the humanities would be affected unless it violated the university’s intellectual property rights.

“What state secrets could there be in the sphere of political science?” he said. “Intellectual property, yes. We intend to protect our intellectual property, which unfortunately is sometimes used without approval.”

Some professors said the model recalled the Soviet era’s notoriously bureaucratic “first division,” which reviewed documents before they were released to the outside world.

Vyacheslav Y. Morozov, an assistant professor in St. Petersburg State University’s international relations department, estimated that 70 percent of the scholars in his

department published and spoke abroad regularly, and worried that the new demands could make that impossible.

"It might be a model for the defense establishment, but I don't think anything like that exists in the universities," Professor Morozov said. "Maybe in China. Maybe in Iran."

In 2007, a similar proposal was shelved at Volgograd State University after faculty members argued against it, said Ivan Kurilla, the head of Volgograd's international relations department.

Several St. Petersburg professors said they worried that the rule would be applied selectively to penalize specific faculty members, either because they were in conflict with administrators, or because their work was critical of the Russian government.

"You can see the list of people whose publications might be stopped," said Dmitri A. Dubrovsky, an associate professor of international relations and human rights at Smolny College, a division of St. Petersburg State University. "I suspect they will stop any publication that expresses small concern about the real situation in the political sphere and in human rights."

The change was noteworthy, in part because it is being introduced at the prestigious institution where President Dmitri A. Medvedev and Prime Minister Vladimir V. Putin studied law, and where Medvedev taught for nine years.

The university's rector, Nikolai M. Kropachev, the longtime law dean, is on good terms with both leaders. In 2000, after the television show "Kukly" mocked Putin, then running for president, Kropachev signed a letter calling for sanctions against the program, which the letter described as "an eloquent example of the abuse of freedom of speech."

After he was named rector last year, Kropachev set about strengthening central controls over the sprawling institution and its teaching staff, which numbers more than 4,000. Since then, the university has improved in international rankings, rising to No. 168 from 228 in the *Times* Higher Education ratings list, and increased its citations in foreign-language journals by 7 percent, Gorkinsky said.

As Medvedev focuses his ambitions on modernization, his alma mater clearly has his attention. Along with Moscow State University, St. Petersburg is being granted special autonomous status so that it can independently bring technology to market and its rector can be hired or fired only by the Russian president.

But some on the faculty complain that the new vision is authoritarian. In the spring, after the dean of the journalism school sharply criticized the rector's policies, the president of the university filed charges against her, alleging libel and embezzlement. Students picketing in her favor were arrested.

Even critics acknowledge that the university needs to increase its oversight mechanisms. The Soviet collapse sent scientists scrambling for foreign work, in areas including weapons development. Though Russia passed an export

control law in 1999, compliance remains weak, a particular danger in an era in which civilian laboratories produce "dual-use technologies" that can be used in weapons manufacture, said Igor Khripunov, a security specialist in the United States at the University of Georgia's Center for International Trade and Security.

Dubrovsky, of Smolny College, said he understood these concerns; the system that developed in the post-Soviet years amounted to "no control at all," he said. But he said the present order veered too far in the opposite direction. "This is the problem of my country — there is either total control or no control at all," he said. "These are the only two possible positions." Reported in: *New York Times*, October 28, November 2. □

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(*ALA names Jones to head OIF, FTRF . . . from page 1*)

Jones brings a rich background in library administration, scholarship and intellectual freedom advocacy to the position. From 2003–2009 she was the Caleb T. Winchester University Librarian and Deans' Council Member at Wesleyan University in Middletown, Connecticut. She held previous library directorships at Union College, the University of Northern Iowa, and the Fashion Institute of Technology (SUNY), as well as administrative positions at the University of Illinois (Urbana-Champaign), Minnesota Historical Society, New York University and Teachers College Library, Columbia University.

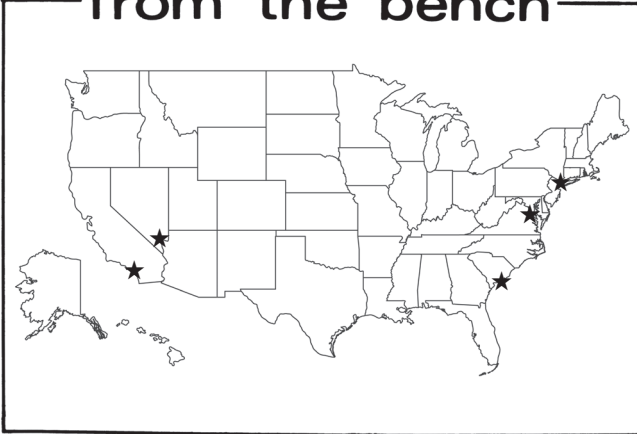
In 1995, Barbara Jones received a Ph.D. in U.S. Legal History from the University of Minnesota/Twin Cities. She also holds an M.A. in History, Archival Management, and Historical Editing from New York University; an M.L.S. from the Columbia University School of Library Service; an M.A.T. in English from Northwestern University; and, a B.A. in English from University of Illinois at Urbana-Champaign. She is a member of Phi Beta Kappa.

Deborah Caldwell-Stone, who served as Interim Director in the months since Judith Krug's death, will become Deputy Director.

Thanks go to the members of the search committee for a successful effort: Kenton L. Oliver, president, Freedom to Read Foundation; Martin L. Garnar, 2009–2010 chair, ALA Intellectual Freedom Committee; Mario Ascencio, 2009–2010 chair, ALA Committee on Legislation; J. Douglas Archer, 2008–2009 chair, ALA Intellectual Freedom Committee; Mary Taylor, executive director, Library and Information Technology Association; Karen O'Brien, director, ALA Office for Accreditation; Cynthia Vivian, director, ALA Human Resources; and Mary Ghikas, senior associate executive director, ALA. □



## from the bench



### U.S. Supreme Court

School board members in Miami have won their battle to remove a children's book from the shelves of Miami-Dade school libraries because they said the book presented an inaccurate picture of life in Cuba.

On November 13, the U.S. Supreme Court declined to take up the case of *Vamos a Cuba*, the little book that sparked a big controversy over alleged censorship in Miami.

The action let stand a 2-1 ruling by the U.S. Court of Appeals for the Eleventh Circuit that the school board's decision to remove the book was not censorship in violation of the First Amendment. Instead, the Atlanta-based appeals court said the school board was seeking to remove the book because it contained substantial factual inaccuracies.

The American Civil Liberties Union (ACLU) of Florida had appealed to the high court to overturn the Eleventh Circuit decision.

"It is a sad day for free speech in our great nation," said JoNel Newman, a lawyer with the ACLU of Florida. "This is a dangerous precedent, and a huge leap backwards in the battle against censorship. Aftershocks may be felt in public school libraries across the country."

A federal judge had earlier found that the school board had engaged in unconstitutional censorship. "School board members intended by their removal of the books to deny school children access to ideas or points-of-view with which the school officials disagreed," US District Judge Alan Gold said.

The judge issued an injunction blocking removal of the book. The appeals court ordered the injunction to be lifted, and it is this order that was upheld by the Supreme Court's action.

The underlying controversy arose in 2006, when the parent of a student at a Miami elementary school complained about the book. "As a former political prisoner in Cuba, I find the material to be untruthful" in a way that "aims to create an illusion and distort reality," wrote the student's father, Juan Amador.

*Vamos a Cuba* and its English-language version *A Visit to Cuba* are part of a series of 24 books seeking to introduce young readers, aged four to eight, to other countries.

Among the offending passages was this one: "People in Cuba eat, work, and go to school like you do." Critics of the book said it presented a distorted view of Cuba by suggesting the lives of children there are no different from those in the US. A more accurate portrayal would include the hardships of life in Cuba, they said.

Those against a ban of *Vamos a Cuba* stressed that other books could be included on library shelves to offer a more rounded view of Cuba. They said removing and banning the book was censorship.

The school district responded to the controversy by assembling two boards to review the complaint. The boards voted 7 to 1 and then 15 to 1 to keep the books in school libraries. The Miami-Dade School Board then took up the issue and voted 6 to 1 to replace the book. The board majority said the book was inaccurate and contained several omissions about life in Cuba under Fidel Castro.

In its ruling, the appeals court embraced this view. Supposing the book series included one on North Korea, wrote Judge Ed Carnes in his decision. "Suppose the book stated: 'People in North Korea eat, work, and go to school like you do.' We probably could all agree that statement is factually inaccurate."

"Would a school board be prohibited from removing the book on the ground that doing so would constitute viewpoint discrimination?" Judge Carnes asked. "Or because it promotes political orthodoxy to remove a book that makes a despised regime look better than the truth would? Would a school board's decision to remove that book from the shelves of its libraries amount to book banning? Would removing it be unconstitutional?"

The dissenting judge on the appeals panel answered those questions with a yes. The correct response, he said, was to make more books on Cuba available to students, not fewer.

Carnes argued that *Vamos a Cuba* is not content-neutral. Statements in a nonfiction book that "whitewash the problems of a country and make the life of its people appear to be better than it is are not content neutral any more than overt propaganda would be," he wrote.

Once it is established that the book presents a false picture, Carnes said, the argument that the school board acted

as ideological censors “collapses on itself.”

The ACLU disagreed. “The Miami-Dade School Board violated the right of school children to have access to the marketplace of ideas in their school libraries,” said Howard Simon, executive director of the ACLU of Florida. “These books were removed under the guise of ‘inaccuracies,’ but the real reason they were removed was because the books ran afoul of the political orthodoxy of a majority of the school board members.”

He added, “If that is to become the new standard for censoring books from public library shelves, the ACLU may be immersed in censorship battles for years to come.” Reported in: *Christian Science Monitor*, November 16.

The Supreme Court on November 30 vacated a lower court ruling that would have required the government to release photographs showing the abuse of prisoners in Iraq and Afghanistan.

The decision was three sentences long and unsigned, and it followed the enactment of a law in October allowing the secretary of defense to block the pictures’ release. The Supreme Court sent the case back to the lower court, the United States Court of Appeals for the Second Circuit, in New York, for further consideration in light of the new law.

The case was brought by the American Civil Liberties Union under the Freedom of Information Act, which makes disclosure of information in the hands of the executive branch mandatory unless an exemption applies. The Second Circuit ordered the photos released last year, and the Justice Department initially recommended against an appeal to the Supreme Court.

But President Obama overruled his lawyers, saying his national security advisers had persuaded him that releasing the photos would inflame anti-American sentiment abroad and endanger American troops. Some of the pictures, according to a government brief, showed “soldiers pointing pistols or rifles at the heads of hooded and handcuffed detainees,” a soldier who appears to be striking a detainee with the butt of a rifle, and a soldier holding a broom “as if sticking its end” into a prisoner’s rectum.

In the Second Circuit, the government relied on an exemption to the freedom of information law that applies to “information compiled for law enforcement purposes” that “could reasonably be expected to endanger the life or physical safety of any individual.”

Judge John Gleeson, writing for a unanimous three-judge panel of the Second Circuit last year, said the exemption required a specific anticipated danger. The exemption “may be flexible, but it is not vacuous,” Judge Gleeson wrote. Referring to “a population the size of two nations and two international expeditionary forces combined,” he said, is insufficient.

The government’s reading, the judge added, would create “an alternative secrecy mechanism far broader than the government’s classification system.”

The Supreme Court’s summary order in the case, *Department of Defense v. A.C.L.U.*, did not address whether that ruling was correct. It merely said the new law required reconsideration of the case.

The law applies to photographs taken from September 11, 2001, to January 22, 2009, showing “the treatment of individuals engaged, captured or detained after September 11, 2001, by the armed forces of the United States in operations outside of the United States,” so long as the secretary of defense certifies that disclosure “would endanger citizens of the United States, members of the United States armed forces or employees of the United States government deployed outside of the United States.”

Robert M. Gates, the secretary of defense, signed the required certification on November 13.

Human rights groups and news organizations urged the Supreme Court to refuse to hear the case.

The court’s brief order indicated that Justice Sonia Sotomayor, who until recently was a judge on the Second Circuit, did not participate in the decision. Judge Sotomayor was not a member of the appeals court panel that ordered the photos released.

The A.C.L.U. issued a statement saying it would continue to fight for disclosure of the pictures. “We continue to believe that the photos should be released, and we intend to press that case in the lower court,” said Steven R. Shapiro, the group’s legal director. “No democracy has ever been made stronger by suppressing evidence of its own misconduct.” Reported in: *New York Times*, December 1.

Several justices seemed convinced December 1 that a federal law restricting the advice bankruptcy lawyers may offer was a bad idea. But they had differing ideas about what the Supreme Court should do about it.

“It’s a stupid law,” Justice Antonin Scalia said. “Where is the prohibition of stupid laws in the Constitution?”

Chief Justice John G. Roberts Jr., on the other hand, appeared receptive to the argument that the law violated the First Amendment by intruding into the relationship between lawyers and clients.

The justices, all of whom are lawyers, seemed to take particular interest in the case, presumably because it concerns lawyers’ free speech rights.

“Congress often forgets about the First Amendment,” Justice Anthony M. Kennedy said, “but lawyers don’t.”

The law forbids advising clients “to incur more debt in contemplation of” a bankruptcy filing. Piling on debt just before filing for bankruptcy in the hope that it will not have to be repaid is, all concerned agreed, an abuse of the system and may amount to fraud. But state ethics rules already forbid lawyers to advise their clients to break the law.

On the other hand, some new debt is both legal and prudent. It may be a good idea to refinance a mortgage to pay down credit card debt or to take out a loan to buy a car to get to work. The 2005 law seems to forbid lawyers to give advice about that second sort of action.

Justice Ruth Bader Ginsburg asked about medical expenses. Suppose, she said, that a woman was “just told by her doctor that she has a serious cancer that needs operation and radiation and she is at the end of the line on resources.” Could the woman’s lawyer advise her to take on more debt to treat the cancer?

It depends, said William M. Jay, a lawyer for the government. Lawyers may not advise clients to add debt in two situations, he said: in an effort to abuse the bankruptcy system or to defraud creditors.

That answer did not satisfy Chief Justice Roberts. “Under your construction,” he told Jay, “it seems to me that a lawyer trying to give correct, legal, ethical advice has got to pause before every sentence” and worry about whether the advice will later be seen as a violation of the law.

The case, *Milavetz, Gallop & Milavetz v. United States*, was brought by a Minnesota law firm that objected to three parts of the law. In addition to the core First Amendment challenge, the firm argued that Congress had not meant to cover lawyers in the first place. That argument did not seem to gain much traction with the justices.

The firm also objected to a requirement in the law that its advertising include this statement or something like it: “We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.”

Justice Samuel A. Alito Jr. said he was troubled by that requirement. “A prospective client looks at that,” he said, “and they say, ‘Well, I don’t want a debt relief agency, I want a lawyer.’”

Jay said the firm was free to add to and clarify the statement. “There is no restriction on what content goes in the ad,” he said, “only that it include this disclaimer.”

As for the part of the law restricting legal advice, Jay said it should be narrowed rather than struck down. The law, the government said in a brief, should be read to bar “only advice to take on debt with an intent to abuse the bankruptcy laws, such as advice to charge a vacation, concert tickets or some similar purchase to a credit card, knowing that the purchaser will enjoy the full benefit of the purchase and then shed most or all of the debt in bankruptcy.”

But G. Eric Brunstad Jr., a lawyer for the Minnesota law firm, said the law “whipsaws the attorneys who are trying to apply it.” State ethics rules “say you have to give unfettered, candid advice to your client,” he said, while the federal law says “you must give truncated advice.” Reported in: *New York Times*, December 2.

The United States Supreme Court on November 1 turned away a last-ditch appeal to stop the release of documents from sexual abuse lawsuits against priests in a Roman Catholic diocese in Connecticut.

The court refused to hear the appeal from the diocese, in Bridgeport, which has fought for years to prevent the release of the documents. Last month, the justices refused to grant a delay while they considered the diocese’s full appeal.

The order was issued without comment.

The *New York Times*, The *Boston Globe*, The *Washington Post* and The *Hartford Courant* have asked to see the documents. The Connecticut Supreme Court has ruled that more than 12,000 pages from 23 lawsuits against six priests should be unsealed. The documents include depositions, affidavits and motions.

The records have been under seal since the diocese settled the cases in 2001. They could shed light on how Cardinal Edward M. Egan of New York handled the allegations when he was the bishop of Bridgeport.

The diocese says the First Amendment prohibits civil authorities from intruding in internal church decisions about priest assignments. Diocesan officials released a statement saying they were disappointed with the decision, but would work with the Connecticut courts on releasing the documents.

“We continue to believe that the constitutional issues presented, including the First Amendment rights of religious organizations and the privacy rights of all citizens, are significant and important for the court to consider,” the statement said.

The diocese also said that there had been a “true culture change” in the church, and that leaders had worked hard to address sexual abuse by the clergy and to support victims. Reported in: *New York Times*, November 2.

## **national security**

### **New York, New York**

A federal court ruled October 20 that the government can continue to enforce a five-year-old gag order on an Internet service provider (ISP) that the FBI served with a national security letter (NSL) many years ago. The ruling came in a lawsuit brought by the American Civil Liberties Union and the New York Civil Liberties Union on behalf of the ISP. Under a PATRIOT Act provision, the FBI can use NSLs to demand personal records about innocent customers from ISPs, financial institutions and credit companies without prior judicial approval, and then bar NSL recipients from disclosing anything about the record demand.

“We’re deeply disappointed that the court ruled that the FBI can continue to gag our John Doe client, who has been silenced for more than five years,” said Melissa Goodman, staff attorney with the ACLU National Security Project. “This gag—which we continue to believe is unnecessary and unconstitutional—has prohibited Doe from participating in the public debate about the PATRIOT Act and has been used to suppress key information about the FBI’s misuse of NSLs. The FBI’s overuse of the NSL gag power has allowed the FBI to manipulate the surveillance debate and to deprive Congress and the public of crucial information that would inform the ongoing congressional debate about this intrusive surveillance power.”

In addition to ruling that the FBI could continue to

enforce its long-running gag on John Doe, the court also ruled that the FBI can continue to suppress an “attachment” to the NSL Doe received. The ACLU argued that the attachment, if disclosed, would show that the FBI tried to obtain records that it was not entitled to obtain under the NSL statute.

Because the FBI imposed a gag order on the ISP, the lawsuit, now called *Doe v. Holder*, was initially filed under seal, and even today the ACLU is prohibited from disclosing its client’s identity. The FBI continues to maintain the gag order even though the underlying investigation is more than five years old and even though the FBI abandoned its demand for records from the ISP over two years ago.

In December 2008, the U.S. Court of Appeals for the Second Circuit ruled that parts of the NSL statute’s gag provisions were unconstitutional, specifically the sections that wrongly placed the burden on NSL recipients to challenge gag orders, narrowly limited judicial review of gag orders and required courts to defer entirely to the executive branch. The court of appeals sent the case back to the U.S. District Court for the Southern District of New York and ordered the government to justify the constitutionality of the gag on Doe.

In June 2009, the government submitted its justification for the gag on Doe entirely in secret, in a classified declaration that even Doe’s ACLU attorneys couldn’t see. While the district court ordered the government to produce an unclassified summary, most of the evidence used to justify the continued gag on the ISP remains a secret.

“Continuing to impose a blanket gag order on our Doe client places a serious burden on his First Amendment rights. It is important that NSL recipients—those with first-hand knowledge of the FBI’s actual use and abuse of its NSL power—be allowed to speak out,” said Larry Schwartztol, staff attorney with the ACLU National Security Project.

Bills are currently pending in both the House and Senate that would amend the NSL gag by requiring the government to convince a court that a national security gag order is necessary. Reported in: ACLU Press Release, October 20.

## **school**

### **Henderson, Nevada**

A District Court judge on November 10 refused to drop the curtain on high school productions of “Rent” and “The Laramie Project.” Henderson’s Green Valley High School can proceed with both plays. Sarah Balogh, 17, who has a role in “Rent,” said the legal ruling was a victory for the plays’ themes. “I think it’s a start toward what they’re all about: compassion and tolerance.”

Some parents who object to the plays’ “mature content” had sought a preliminary injunction to stop both productions. But lawyers for the Clark County School District said the parents’ lawyer failed to prove one of the basic criteria

for a preliminary injunction, that it would cause “irreparable harm” to the plaintiffs.

Participation in the plays is voluntary and requires parental permission. Students are not required to attend the plays, which are extracurricular activities.

When the district’s general counsel, Bill Hoffman, contended that the plaintiffs had failed to “provide any evidence,” Cory Hilton, the plaintiff’s attorney, responded that his clients’ children would not be able to participate in the school’s one musical of the year, “Rent,” or cite participation in the plays on their college admission applications as proof of their extracurricular activities.

“There’s your irreparable harm,” Hilton said. “It’s exclusionary.”

The children could not participate because of their parents’ objections to the material, Hilton argued.

The judge was not persuaded by his arguments. “It’s a matter of choice,” Judge David Wall said.

Lawyers for the American Civil Liberties Union of Nevada filed a court brief supporting the district with constitutional arguments for free speech.

Hilton had also argued that Green Valley failed to follow district regulations in presenting controversial curriculum, emphasizing that Musical Theatre International, the publisher of “Rent,” had given the high school edition of the musical an “R” rating. The district does not allow R and PG-13 movies to be shown in the classroom.

Lawyers for the district responded that movie ratings and parents’ right to “reconsideration and review” of curriculum materials do not apply to extracurricular theatrical plays, which have been edited for high school audiences.

Rick Magness, whose children are Green Valley graduates, said the parents who objected to the plays will meet soon to decide what to do next. He said he did not regret taking legal action.

“In our opinion, it was the right thing to do,” Magness said.

Hoffman did not think the parents had any legal options left to stop the productions. “As a practical matter, the case is over,” he said after the hearing.

Students were relieved at the outcome. “I’m ecstatic,” said Amanda Smith, 16, who has a lead role in “Rent.” Green Valley drama student Anthony Bell, 17, felt the same way. “Now, we can concentrate on doing the show.”

The school’s theater season’s theme is “Controversy, Compassion, Courage” as “The Laramie Project” deals with the brutal slaying of a gay college student in Wyoming and “Rent” is about starving artists coping with drug addiction and AIDS.

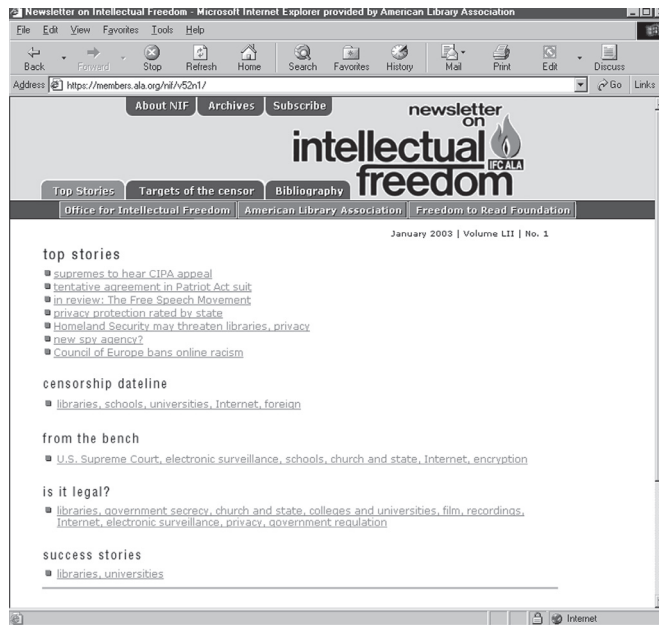
Hilton, the lawyer for the parents objecting to the plays, acknowledged he had not seen the script for either school production but said he was more concerned about process than the content. He is afraid of the “slippery slope” that might come if school officials do not follow Clark County School District procedures for presenting controversial

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subject matter to students.

“The Laramie Project” was presented on October 12 on the 11th anniversary of the murder of Matthew Shepard, the subject of the play. It was scheduled to be presented again November 12–14. “Rent” was scheduled for performances in late January and early February.

The actors said the school has been accused of trying to push a political agenda. “That’s definitely not what we’re doing,” said Samantha Ma, 15, an actor in “Rent.” School officials and students also note that both plays have been toned down for younger audiences.

“This is what people don’t get. It’s the high school edition,” said Joshua Lovell, 16, who plays the principal character, Mark Cohen, in “Rent.” There is no illicit drug use and very limited “public displays of affection,” Lovell said. “Some hugging, but no kissing,” Lovell said.

Hilton said he had the support of at least 100 parents from different backgrounds, religious and non-religious. Hilton and Rick Magness, a parent of recent graduates, said families feel excluded because they find the content of the plays objectionable.

In a letter to Hilton, Green Valley Principal Jeff Horn responded that the school has performed many plays in the past with controversial content. “Romeo and Juliet,” for instance” dealt with teen suicide and betrayal of parents and “As You Like It” had some cross-dressing. Reported in: *Las Vegas Review-Journal*, October 24, November 11.

## leafletting

### San Clemente, California

A Southern California city’s ban on placing leaflets on car windshields parked in the street can’t be justified as an anti-littering measure and probably violates free speech, a federal appeals court said October 2 in a ruling that halted the law’s enforcement.

Leafletters have a constitutional right to express their views, even if a motorist isn’t interested and throws the handbill away, said the U.S. Court of Appeals for the Ninth Circuit in San Francisco. “The burden on recipients of disposing of unwanted leaflets cannot justify hampering speech,” Judge Marsha Berzon said in the 3–0 ruling.

She quoted a 1943 U.S. Supreme Court ruling that said the government can’t prohibit the distribution of literature just because of the “minor nuisance” of cleaning up litter. Even if keeping the streets clean might be a rationale to restrict free expression in some cases, Berzon said, the Orange County city of San Clemente offered no evidence that leaflets left on windshields added significantly to litter.

The court ordered an injunction against San Clemente enforcing the law. A federal judge had refused to block enforcement in 2007, citing the city’s needs to prevent litter and promote “aesthetic values.”

The suit was filed by a group of people who wanted to distribute messages about immigration but were told they would be cited for violating the ordinance if they put leaflets on parked cars.

The court said its ruling would also apply to distributors of commercial leaflets. It didn’t say whether other California cities have laws similar to San Clemente’s, but noted that most courts that have considered such measures in other states have struck them down.

A California appeals court upheld a shopping center’s ban on leafleting parked cars in 1990. But Berzon said the ruling involved private property, where owners may have more leeway than government regulators. Reported in: *San Francisco Chronicle*, October 3.

## license plates

### Charleston, South Carolina

A U.S. judge has ordered South Carolina not to issue a vehicle number plate with a Christian image and slogan. The state legislature had approved a licence plate with a cross in front of a stained glass window and the words “I Believe” written along the top.

District Court Judge Cameron Currie said that the plate violated the First Amendment, which enshrines the separation of church and state.

The case was brought by Americans United, which backs the separation of church and state, on behalf of several individuals and Hindu and American-Arab groups. It began after Lt. Governor Andre Bauer helped pass legislation allowing the number plate in early 2008.

Describing it as a “freedom of speech issue,” he argued that given the state already permitted 103 speciality vehicle plates it was “ridiculous” that there was not one for Christians.

According to local media reports, several hundred people had registered to buy the plate. But Judge Currie ruled that the law amounted to state endorsement of a particular religion. And she hit out at Bauer, saying: “Whether motivated by sincerely-held Christian beliefs or an effort to purchase political capital with religious coin, the result is the same. The statute is clearly unconstitutional and defence of its implementation has embroiled the state in unnecessary (and expensive) litigation.” Reported in: BBC News, November 10. □

## is it legal?



### colleges and universities

#### San Diego, California

On October 22, several hundred students at Southwestern College, a community college outside of San Diego, held a peaceful protest over budget cuts that are leading to the cancellation of more than 400 additional course sections next semester. A day later the students got a sign that someone was paying attention to the protest, but they didn't get the response they wanted: Four faculty members were immediately suspended and barred from the campus or using the campus e-mail system.

The suspended professors include the current and former presidents of the faculty union, which supported the student protest.

With California's economy in a free fall, and the budgets of public colleges and universities in similar decline, student and faculty protests have been picking up across the state, and several campuses have seen building takeovers or other examples of civil disobedience. But the Southwestern situation—with faculty members getting kicked off campus—is notable for the extent of administration reaction to a protest that was relatively mild compared to some others.

The letters that the four faculty members received telling them that they had been suspended immediately did not say why. But the letters referenced (by number) a section of California's penal code that bars people from "willfully disrupting the orderly operation of the campus."

Philip Lopez, an English professor who is president

of the faculty union, said that there is no other possible explanation for the suspensions except the rally. "Nothing else happened the day before," he said. Lopez said that the union—an affiliate of the National Education Association—has consulted with union lawyers and is demanding a hearing, which the college must schedule within seven days. He said that the rally received widespread support because the students and faculty members were questioning how the college is responding to the budget crisis. While state cuts are severe, he said, the college has insisted on keeping a reserve fund that is twice as large as necessary, when cutting its size might save more courses. He noted that the cuts planned for next semester will be about one fourth of courses in many departments.

Regardless of one's views of the college's strategy, he said it was wrong for professors to be kicked off campus without any explanation and apparently because they criticized the administration. In his case, he said, he was forced to miss a meeting with administrators at which he was to have represented faculty interests, because he was ordered off campus.

"Clearly the administration doesn't think there is such a thing as the First Amendment," he said.

Andrew Rempt, a writing instructor who was suspended, said that he was most upset about being pulled from his classes and not being able to help his students. "I feel terrible not being able to teach my courses," he said. "We're at a real key point in the semester, a real make-or-break point for many of my students, and I can't be there to help them. This is very difficult for me to deal with because that's the whole point to what we do."

Ron Norton Reel, president of the Community College Association, an affiliate of the California Teachers Association (the NEA's California unit), issued a statement denouncing the suspensions.

"In misguided actions by administrators who have no respect for the rights of faculty, reports that at least four instructors at Southwestern College have been suspended with pay after taking part in a campus rally against severe cuts are extremely disturbing," he said. "When a college president and governing board support cutting 25 percent of all course offerings and exclude faculty from important decisions, the right response is to challenge these cuts. State education cuts are threatening the future of this college and many others. Retaliating against faculty for standing up for their school and students is a reckless course of action."

Southwestern initially issued a statement saying the faculty suspensions were due to a personnel matter unrelated to the rally. But a campus officials said later that the suspensions were related to an incident after the main protest, which was officially limited to a one-hour time period and a proscribed "free-speech area" on the campus.

After the sanctioned protest concluded, a splinter group of about fifty protesters attempted to reach the office of President Raj K. Chopra. On the way, they met a line of

police officers, according to Brent Chartier, the campus police chief. He said some protesters then committed “illegal activity,” which is now under investigation.

Chartier would not describe the nature of the activity nor say whether the faculty members who were suspended may face charges, citing a continuing criminal investigation into the matter. Reported in: *insidehighered.com*, October 26; *Chronicle of Higher Education* online, October 26.

### Stanford, California

In a case with potentially major implications for scholars and publishers, a Stanford University professor who often serves as an expert witness against tobacco companies is fighting an effort by lawyers for the R.J. Reynolds Tobacco Company to obtain the manuscript of his unpublished and unfinished book on that industry.

A Florida state court judge has already authorized the tobacco company’s lawyers to issue a subpoena requiring Robert N. Proctor, a Stanford professor of the history of science, to make his book manuscript available to them so they can comb it for possible material to use in cross-examining him in a civil lawsuit pending there.

But the lawyers for the plaintiffs suing the tobacco company filed a motion asking the court to reconsider that decision and protect Proctor from being forced to grant access to the unpublished manuscript. Their motion calls Proctor their “single most important witness” in their case against the tobacco company, and argues that forcing him to share the manuscript would violate his privacy, his free-speech rights, his academic freedom, and his rights as an author.

Proctor, for his own part, refused to produce the manuscript at a recent deposition in the case and has retained a San Francisco law firm to fight the subpoena—as well as any other efforts to obtain his book—in California state courts.

In an interview he said of the book: “It’s my private thoughts. They are not organized yet. They are not in finished form.”

“Why should the tobacco company be mucking around in private thoughts?” he asked. “They can see it when it is finished.”

The Florida court where the case is pending is the state’s Seventh Judicial Circuit Court in Volusia County.

Robert M. O’Neil, director of the Thomas Jefferson Center for the Protection of Free Expression at the University of Virginia and a veteran scholar of issues related to academic freedom, said that the legal fight over the manuscript “has profound implications” for academe. A decision by the courts to force Proctor to give up a copy of the manuscript, he said, “is likely to complicate, if not deter, future scholarship ... if it means that such research-in-progress can be disturbed in this way.”

Allan R. Adler, vice president for legal and governmental affairs for the Association of American Publishers, said

the dispute over the manuscript is legally “not on very clear ground,” and its outcome hard to predict, because there are few legal precedents dealing with similar fights over access to unpublished material.

Ann M. Arvin, Stanford’s dean of research, sent the Florida court a letter urging it to consider society’s interest in not forcing academic researchers to release research that has not been properly vetted and prepared for publication. She also said that compelling scholars to disclose unfinished research in such circumstances “could have the detrimental effect of discouraging scholars from participating as expert witnesses in litigation.”

The Florida lawsuit is one of several in which residents of that state are attempting to obtain damages from tobacco companies by arguing that they have suffered as a result of tobacco addiction. The lawyers for the plaintiffs, Stella and Robert Koballa, say in their motion seeking to block access to Proctor’s manuscript that he will present testimony arguing that R.J. Reynolds and other tobacco companies knew cigarettes were addicting long before the surgeon general declared them to be such.

Proctor said that lawyers for the tobacco company have sought for more than a year to obtain the manuscript to his planned book, tentatively titled *Golden Holocaust: A History of Global Tobacco*. He said he does not yet have a publisher for the book but is confident he will find one. His past books include *The Nazi War on Cancer* (Princeton University Press, 1999) and *Cancer Wars: How Politics Shapes What We Know and Don’t Know About Cancer* (Basic Books, 1995).

In a deposition filed in connection with the Florida case, he describes himself as one of only two professors of history in the nation who regularly testify against the tobacco industry, and alleged that “the tobacco industry has spent years trying to harass, intimidate, and use multiple legal means to prevent me from testifying in litigation.” He said that his book “will contain previously unpublished information regarding tobacco-industry practices,” but that his manuscript remains unfinished and has not been through editing or peer review, and his working draft “currently contains my outlines, mental impressions, and notes.”

“Release of the unpublished manuscript could cause damage to my professional credibility and professional standing, as this manuscript is a work in progress and does not represent completed and fact-checked research,” Proctor’s deposition said.

The transcript of an August meeting of Judge William A. Parsons and the lawyers for both sides in the case shows that the lawyers for R.J. Reynolds convinced the judge that the manuscript might contain information useful to their cross-examination, and that it was covered by state laws letting lawyers secure from one another any material that might at least lead them to evidence that could be used in court.

In granting the tobacco company’s lawyers permission



to issue a subpoena, however, Judge Parsons stipulated that they could not use the manuscript in other cases or disseminate it to other lawyers.

O’Neil of the Thomas Jefferson Center argued that, even with such a stipulation, there remains a danger that the manuscript could be leaked out in a manner that would embarrass Proctor.

The motion asking the court to reconsider its decision to authorize the subpoena argues that forcing Proctor to relinquish the manuscript would violate his rights under federal copyright law and put his ability to economically benefit from his book in jeopardy. It also argues that Florida’s privacy laws give Proctor a right to retain the book, that he should be regarded as a journalist and covered by legal precedents protecting journalists from compelled disclosure of unpublished material, and that forcing him to produce the manuscript would infringe upon his academic freedom.

The motion also argues that the manuscript is unlikely to produce information that the lawyers for the tobacco company will find useful. If they are trying to get at his views of the tobacco industry, they can use cross-examination or comb through his already published writings, the motion says.

“Only Robert Proctor knows what [the book] says,” said Jonathan D. Kaney Jr., a lawyer for the plaintiffs in the case. “But you can bet it does not say anything nice about R.J. Reynolds.” Reported in: *Chronicle of Higher Education* online, October 12.

### **Adelphi, Maryland**

The University System of Maryland flirted with adopting rules at the request of state legislature to ban public viewings of pornography, but its leaders voted November 11 against adopting such a policy on the grounds that it would present unwanted legal and logistical challenges.

William E. Kirwan, the system’s chancellor, and its Board of Regents had been weighing a policy since last spring, when the Maryland General Assembly included in its budget bill the requirement that all public colleges and universities enact a policy “on the use of public higher education facilities for the displaying or screening of obscene films and materials” by December 1 or lose state funding.

The legislature’s demands came after students at the University of Maryland, College Park planned an early April public screening of “Pirates II: Stagnetti’s Revenge,” the sequel to a popular hardcore movie. State Sen. Andrew P. Harris, a Republican representing Baltimore County, called the proposed showing “shocking” and responded by introducing the budget amendment blocking funding for any institution that did not adopt an obscenity policy.

The Democratic Senate president, Thomas V. Mike Miller, said public porn viewings were “really not what Maryland residents send their young students to college campus for.” After the budget amendment passed, Kirwan

and other officials said they would work to find a way to comply without restricting free speech.

But, following months of research and deliberation, Kirwan told the regents, he had concluded that the best option was to defy the legislature’s joint budget committees and not adopt a policy. “It is my recommendation that the board ask that I write the joint chairs [of the legislature’s budget committees],” he said, “expressing the view that a policy would not be in the best interest of the University System of Maryland or the state because of the First Amendment issues such a policy would raise and because of the administrative burden and costs of implementing a potentially flawed policy.”

The board voted unanimously in favor of his suggestion.

Clifford M. Kendall, the board’s chair, cautioned that the vote shouldn’t be taken as an endorsement of pornography. “This is a two way street,” he said. “One of the things that, quite frankly all of us are having a problem with, is we’re really not for pornography on campus.” Students, he said, ought to weight the moral and ethical implications of a public viewing of obscene materials for entertainment purposes before scheduling an event.

Sarah Elfreth, a senior at Towson University and the sole student regent, said she thought the decision not to adopt a policy “would never happen,” but added she was “happy it is happening.” Students “worked tirelessly on this to get their opinions out” and, without their voices, she said, “I don’t think we would be here.”

Another regent, Norman R. Augustine, heralded the vote as the right choice. “The most sensible position we can take,” he said, “is we will abide by the law of the land.”

But the vote was not a foregone conclusion. The system spent the summer working with the state attorney general and researchers at the Thomas Jefferson Center for the Protection of the First Amendment, at the University of Virginia, to formulate a policy. The presidents of the 11 universities in the system—including all five campuses of the University of Maryland—voiced their opinions, as did students, faculty and staff at all the institutions.

With all that input, the system formulated a policy that would have required administrators to vet all films being shown publicly for “purely entertainment purposes” and to determine which required an “educational component” and restrictions on the time, place and manner of screenings.

The Jefferson Center found that no other states or public universities had a comparable policy. Robert M. O’Neil, the center’s director and former president of the Universities of Virginia and Wisconsin, said “Maryland would have been absolutely unique had it adopted a policy.”

Though it was a legally sound proposal, Kirwan said, the policy would likely prove to be more trouble than it was worth, leaving the system vulnerable to lawsuits and imposing new costs on institutions that are in the midst of vast budget cuts.

“We’re absolutely, virtually certain [it] would be challenged in the courts because this is such a sensitive issue,” he told the regents. “With all of the people in the country rightly concerned about protection of First Amendment rights, this would be a target since it’s the first in the country.”

A legal challenge, Kirwan added, “would cost a lot of money ...and would have to be pursued to appeal and almost certainly to the Supreme Court.”

The policy would have raised other concerns, too. It would have required each university to take on “a substantial new administrative burden” that would come with “not insignificant additional costs at a time when our budgets are all under great strain.” It would be open to interpretation by administrators at 11 institutions and would be “very difficult to administer in a uniform manner.”

Still, the deadline looms and it’s unclear whether the legislature will accept the board’s decision. “I’m very hopeful that the legislators that requested this will understand and move forward,” said Kendall, the board chair. “I hope the students and the faculty will understand this and move forward ... and that we’ll all be working for a highly moral and ethical system that we can be proud of.” Reported in: [insidehighered.com](http://insidehighered.com), November 12.

### **Latrobe, Pennsylvania**

When most of Saint Vincent College’s tenured faculty members voted last year to criticize President James Towey’s management of the Benedictine college, most professors were so nervous about retribution that few were willing to discuss their concerns in public. The Rev. Mark Gruber was an exception, and he may be paying a price for that outspokenness now.

The Benedictine monk and professor of anthropology has been stripped of his teaching duties and barred from the college and from all interaction with students, punished amid accusations of sexual misconduct that were initiated last summer by Towey and the archabbot at the affiliated Saint Vincent Seminary.

Towey and Archabbot Douglas R. Nowicki called state police to Saint Vincent last summer to investigate charges that Father Mark had downloaded child pornography onto a campus computer—allegations that the police deemed to be unfounded, because they found no images on the computer of men under the age of 18, and because the computer was in a common area and many people had access to it.

But Saint Vincent officials punished Father Mark in September, reportedly after concluding that he had violated church law by viewing online images of nude men on the college computer.

The actions against Father Mark have drawn the attention of the American Association of University Professors, which in a letter warned that the actions against the monk may violate his rights under the college’s faculty handbook

and urged the college and the archabbey to “rescind [the] actions that bear on [his] professorial status.”

The story told by various documents in the case—notably a report filed by Pennsylvania State Police in August—suggest an aggressive attempt by Saint Vincent officials to discover wrongdoing by Father Mark. He vocally criticized Towey—and, by extension, Archabbot Nowicki, with whom Towey is closely allied—last year.

“The tenured faculty took the lead, fortunately, but there are a lot of other people who share their views, and who are tired of the overriding of collegial discourse, the discounting of the consensus way of decision making, and what I see as the obfuscation of our Catholic mission,” he told *Inside Higher Ed* last year. Towey has announced that he plans to leave Saint Vincent at the end of the current academic year.

The report filed by State Trooper Glenn Bard said that he and another officer were called to the Saint Vincent campus on July 23 and met by Towey, Archabbot Nowicki, and two other officials. Towey told the officers that Saint Vincent administrators “had reason to believe that [Gruber] was utilizing a college computer to view child pornography.”

Saint Vincent officials provided the officers with a list of Web sites that they asserted Father Mark had visited, and gave the officers permission to seize the computer, which was situated in a common area outside Father Mark’s office at the college. The police report said that the monk declined to directly answer whether he had used the campus computer system to look at child pornography. “I don’t think that is a relevant question,” Father Mark told the officers.

Bard’s review of the materials on the computer, he wrote in the police report, found “images, videos and links to nude young men, but none could be identified as under the age of 18 years of age,” as would have been required to charge him under the state’s “sexual abuse of children” statute. Bard wrote that an e-mail analysis also revealed that “the computer system was being used by more than just Gruber. I found several e-mail accounts on the computer system that appeared to belong to other students, or faculty members.”

After Bard shared his findings with prosecutors, they agreed that “no prosecution should be sought” against Father Mark, he wrote.

When Bard told Towey and others on August 4 that the “full investigation” had failed to find evidence of a crime, the Saint Vincent officials asked him to investigate further “to determine who was looking at pornography,” the officer wrote. Because that was not a crime, Bard said, he told them that “no further analysis would be completed.” He filed the report on August 30, concluding: “Due to lack of evidence that a crime has occurred, this investigation to be closed.”

But Saint Vincent officials did not let the situation rest there. According to the AAUP’s October 23 letter to Towey, Archabbot Nowicki wrote letters to Father Mark on August 19 and September 8 “notifying him that his faculties for priestly ministry had been revoked and his assignment to

teach in the college withdrawn, and that he was barred from the campus and from all further contact with students. These actions have had the effect of summarily suspending Professor Gruber from his tenured faculty position,” wrote B. Robert Kreiser, associate secretary of the AAUP.

In statements, Saint Vincent officials appear to assert that the Benedictine abbey’s punishment of Gruber under church law trumps any rules or guidelines that might protect him as a tenured professor. And indeed, Saint Vincent’s faculty policies—which generally align with those recommended by the AAUP—include an exemption from due process and other standards for monks and priests who are found not to be in good standing with church law, AAUP officials acknowledge.

But that “Benedictine Dismissal for Cause,” the AAUP wrote, “does not appear to apply in the case of Professor Gruber,” since he remains a Benedictine monk at the Saint Vincent Archabbey. Reported in: [insidehighered.com](http://insidehighered.com), November 30.

## privacy

### Washington, D.C.

After a Somali-American teenager from Minneapolis committed a suicide bombing in Africa in October 2008, the Federal Bureau of Investigation began investigating whether a Somali Islamist group had recruited him on United States soil. Instead of collecting information only on people about whom they had a tip or links to the teenager, agents fanned out to scrutinize Somali communities, including in Seattle and Columbus, Ohio. The operation unfolded as the Bush administration was relaxing some domestic intelligence-gathering rules.

The F.B.I.’s interpretation of those rules was recently made public when it released, in response to a Freedom of Information lawsuit, its “Domestic Investigations and Operations Guide.” The disclosure of the manual has opened the widest window yet onto how agents have been given greater power in the post-September 11 era.

In seeking the revised rules, the bureau said it needed greater flexibility to hunt for would-be terrorists inside the United States. But the manual’s details have alarmed privacy advocates.

One section lays out a low threshold to start investigating a person or group as a potential security threat. Another allows agents to use ethnicity or religion as a factor — as long as it is not the only one — when selecting subjects for scrutiny.

“It raises fundamental questions about whether a domestic intelligence agency can protect civil liberties if they feel they have a right to collect broad personal information about people they don’t even suspect of wrongdoing,” said Mike German, a former F.B.I. agent who now works for the American Civil Liberties Union.

But Valerie Caproni, the F.B.I.’s general counsel, said the bureau has adequate safeguards to protect civil liberties as it looks for people who could pose a threat. “Those who say the F.B.I. should not collect information on a person or group unless there is a specific reason to suspect that the target is up to no good seriously miss the mark,” Caproni said. “The F.B.I. has been told that we need to determine who poses a threat to the national security — not simply to investigate persons who have come onto our radar screen.”

The manual authorizes agents to open an “assessment” to “proactively” seek information about whether people or organizations are involved in national security threats. Agents may begin such assessments against a target without a particular factual justification. The basis for such an inquiry “cannot be arbitrary or groundless speculation,” the manual says, but the standard is “difficult to define.”

Assessments permit agents to use potentially intrusive techniques, like sending confidential informants to infiltrate organizations and following and photographing targets in public. F.B.I. agents previously had similar powers when looking for potential criminal activity. But until the recent changes, greater justification was required to use the powers in national security investigations because they receive less judicial oversight.

If agents turn up something specific to suggest wrongdoing, they can begin a “preliminary” or “full” investigation and use additional techniques, like wiretapping. But even if agents find nothing, the personal information they collect during assessments can be retained in F.B.I. databases, the manual says.

When selecting targets, agents are permitted to consider political speech or religion as one criterion. The manual tells agents not to engage in racial profiling, but it authorizes them to take into account “specific and relevant ethnic behavior” and to “identify locations of concentrated ethnic communities.”

Farhana Khera, president of Muslim Advocates, said the F.B.I. was harassing Muslim-Americans by singling them out for scrutiny. Her group was among those that sued the bureau to release the manual. “We have seen even in recent months the revelation of the F.B.I. going into mosques — not where they have a specific reason to believe there is criminal activity, but as ‘agent provocateurs’ who are trying to incite young individuals to join a purported terror plot,” Khera said. “We think the F.B.I. should be focused on following actual leads rather than putting entire communities under the microscope.”

Caproni, the F.B.I. lawyer, denied that the bureau engages in racial profiling. She cited the search for signs of the Somali group, Al Shabaab, linked to the Minneapolis teenager to illustrate why the manual allows agents to consider ethnicity when deciding where to look. In that case, the bureau worried that other such teenagers might return from Somalia to carry out domestic operations.

Agents are trained to ignore ethnicity when looking for

groups that have no ethnic tie, like environmental extremists, she said, but “if you are looking for Al Shabaab, you are looking for Somalis.”

Among the manual’s safeguards, agents must use the “least intrusive investigative method that effectively accomplishes the operational objective.” When infiltrating an organization, agents cannot sabotage its “legitimate social or political agenda,” nor lead it “into criminal activity that otherwise probably would not have occurred.”

Portions of the manual were redacted, including pages about “undisclosed participation” in an organization’s activities by agents or informants, “requesting information without revealing F.B.I. affiliation or the true purpose of a request,” and using “ethnic/racial demographics.”

The attorney general guidelines for F.B.I. operations date back to 1976, when a Congressional investigation by the so-called Church Committee uncovered decades of illegal domestic spying by the bureau on groups perceived to be subversive — including civil rights, women’s rights and antiwar groups — under the bureau’s longtime former director, J. Edgar Hoover, who died in 1972.

The Church Committee proposed that rules for the F.B.I.’s domestic security investigations be written into federal law. To forestall legislation, the attorney general in the Ford administration, Edward Levi, issued his own guidelines that established such limits internally.

Since then, administrations of both parties have repeatedly adjusted the guidelines. In September 2008, Attorney General Michael B. Mukasey signed the new F.B.I. guidelines that expanded changes begun under his predecessor, John Ashcroft, after the September 11 attacks. The guidelines went into effect and the F.B.I. completed the manual putting them into place in December 2008.

There are no signs that the current attorney general, Eric H. Holder Jr., plans to roll back the changes. A spokeswoman said Holder was monitoring them “to see how well they work” and would make refinements if necessary.

The F.B.I., however, is revising the manual. Caproni said she was taking part in weekly high-level meetings to evaluate suggestions from agents and expected about twenty changes.

Many proposals have been requests for greater flexibility. For example, some agents said requirements that they record in F.B.I. computers every assessment, no matter how minor, were too time consuming. But Caproni said the rule aided oversight and would not be changed. She also said that the F.B.I. takes seriously its duty to protect freedom while preventing terrorist attacks.

“I don’t like to think of us as a spy agency because that makes me really nervous,” she said. “We don’t want to live in an environment where people in the United States think the government is spying on them. That’s an oppressive environment to live in and we don’t want to live that way.”

What the public should understand, she continued, is that the F.B.I. is seeking to become a more intelligence-

driven agency that can figure out how best to deploy its agents to get ahead of potential threats. “And to do that,” she said, “you need information.” Reported in: *New York Times*, October 29.

## Washington, D.C.

A Justice Department subpoena requesting all available information on all visitors to an independent news site has raised serious privacy concerns, and questions about how much information the US government is storing about its citizens’ news reading habits.

Privacy watchdog Electronic Frontier Foundation released an extensive report on a “bogus” attempt by a U.S. attorney in Indiana to get Indymedia.us, an independent left-leaning news site, to hand over all the data it had about all the users who visited the site on a particular day.

Further adding to civil libertarians’ and privacy watchdogs’ concerns is the fact that the Justice Department ordered Indymedia to keep silent about the request.

“This overbroad demand for Internet records not only violated federal privacy law but also violated [Indymedia’s] First Amendment rights, by ordering [it] not to disclose the existence of the subpoena without a U.S. attorney’s permission,” the EFF’s Kevin Bankston wrote.

And while Indymedia is an unabashedly left-wing news site, advocating causes such as gay rights and anti-globalization, some of the site’s defenders in the wake of the subpoena controversy are right-wing pundits who are drawing a parallel between the Indymedia case and the war of words between the White House and Fox News.

Fox News host Glenn Beck sent out a Twitter message drawing attention to the Indymedia story. Though the Tweet was non-committal—“Interesting times we live in. Can’t wait to see what this story is about.”—it did raise the unusual prospect of a prominent right-wing commentator championing the rights of a left-wing news site.

“Beck claims to be a libertarian, so it’s no surprise that his hackles might be raised by this case,” wrote Robert Quigley at the Mediaite blog. “But more broadly, it’s understandable why this could alarm the right-wing media and its consumers. They already have a sense that the Obama administration is out for their heads (cf. the Fox News feud with the White House).”

Quigley argued that Indymedia’s outspokenness, rather than its political leanings, could have made the news site a target. “You don’t have to be a ‘wingnut’ to be concerned about the government trying to ferret out the entire readership of a publication and then bar anyone from talking about it,” he wrote.

According to the EFF, Indymedia received a request in January for the IP addresses of everyone who visited the Indymedia site on June 25, 2008. But the request went further than simply asking for the computer addresses of visitors—the subpoena ordered Indymedia to turn over all

identifying information it may have about visitors, including their addresses, email addresses, bank account numbers and social security numbers.

However, as EFF points out, most Web sites don't collect that sort of data from typical visitors. And in the case of Indymedia, their records of visitors' IP addresses are stored only for a short time. So when Indymedia—now represented by the EFF—challenged the subpoena, it argued that the news site was unable to provide that sort of information to the federal government.

EFF reported that, when they challenged the subpoena, the Justice Department backed down, and responded with a one-sentence letter that rescinded the subpoena. But at the same time, Justice Department officials threatened an Indymedia web administrator with charges of obstruction of justice if she revealed the subpoena's existence. Officials told the administrator, Kristina Clair of Philadelphia, that publicizing the request "may endanger someone's health" and would have a "human cost."

"Under pressure from EFF, the government admitted that the subpoena's gag order had no legal basis, and ultimately chose not to go to court to try to force Ms. Clair's silence despite earlier threats to do so," EFF stated.

And the Justice Department may have violated its own rules about making requests from journalists. The guidelines state, among other things, that the U.S. attorney general has to personally authorize a media subpoena.

There is some question as to whose responsibility it would have been to authorize the request. The subpoena was issued on January 30, 2009—ten days after President Barack Obama was sworn in, but days before Holder was sworn in as attorney general. Thus it's not clear if Attorney General Eric Holder authorized the request, but several news blogs are now pointing the finger at the Obama administration.

In an article entitled "White House declared war on Indymedia?," Ed Morrissey writes: "Holder assumed office on February 3, which means that the acting AG may have had to sign off on the subpoena instead — or that Holder may have filled that role while filling the role pending confirmation."

Complicating the matter is the fact that the Justice Department has released no information about what case or investigation the Indymedia request is connected to. Further complicating the case is the fact that Indymedia is a news aggregation site, with links to other news sites, so it's not clear what information the Justice Department could have gleaned from Indymedia's records that would have helped them in an investigation.

Indymedia is a left-leaning site that has championed anti-globalization causes for years. The EFF argues that the case raises serious concerns about the extent to which the US monitors citizens' news reading habits.

"How often does the government attempt such illegal fishing expeditions through Internet data? How many online service providers have received similarly bogus

demands, and handed over how much data, violating how many Internet users' privacy?" EFF asked. "How many of those subpoena recipients have been intimidated into silence by unconstitutional gag orders?" Reported in: alter-net.org, November 11.

### **Bronx, New York**

States often collect far more information about students than necessary and fail to take adequate steps to protect their privacy, a national study has concluded. The dossiers go far beyond test scores, including Social Security numbers, poverty data, health information and disciplinary incidents.

The study from the Fordham University Center on Law and Information Policy, released October 28, casts light on data systems created at the urging of the federal government to track student progress. One finding: States often fail to spell out protocols for purging records after students graduate.

"Ten, 15 years later, these kids are adults, and information from their elementary, middle and high school years will easily be exposed by hackers and others who put it to misuse," said Fordham law professor Joel R. Reidenberg, who oversaw the study. States, he said, "are trampling the privacy interests of those students."

The movement toward statewide databases with unique student identifiers, rooted in the standards-and-testing movement of the 1990s, has grown significantly in this decade under the federal No Child Left Behind law and is getting a fresh push this year from the Obama administration. Federal officials want to link student test scores to teacher files to help evaluate instruction. They also envision systems that track students from pre-kindergarten through college, to help raise college completion rates.

Nearly all states have built or are planning virtual education "data warehouses," aided by federal funding. Advocates say the warehouses have strong privacy protections, but they acknowledge potential shortcomings.

"Is there data collected that's not necessary anymore?" asked Aimee Guidera, executive director of the Data Quality Campaign, based in the District, which is funded by the Bill and Melinda Gates Foundation, among others. "Probably." She cited Kansas and Tennessee as leaders in establishing rules for data control.

But a larger concern, Guidera said, is that states often lack "a strategic, thoughtful way of connecting information and using it to answer questions."

The Fordham study canvassed public information on state data systems and compliance with federal privacy law. Among the findings: At least 23 states note reasons for withdrawal from school such as jail, illness or mental health issues. At least 22 count student absences. At least 29 track whether students are homeless.

The study also found that at least 16 states use or allow

the use of Social Security numbers to identify students and at least 10 note whether a student is a single parent. Another finding: Florida, Kentucky, New Jersey and North Carolina track the date of a student's last medical exam.

The study recommended that states tighten protocols to keep data anonymous, with special provisions for those in local schools who need to know more; that they articulate reasons for collecting data and jettison what is unjustified; and that they appoint officers to oversee compliance with state and federal privacy laws. Reported in: *Washington Post*, October 28. □

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*colleges and universities urged  
to defend free speech . . . from page 4)*

. . . . Thus, any suggestion that ‘matters of public concern’ may not encompass job-related expression of professors would undermine the special protections the Court has given academic freedom for the past 50 years.”

Justice Anthony Kennedy, in his opinion in the case, noted the issues of academic freedom (which were picked up on in Justice David Souter's dissent) and suggested that they weren't relevant to the *Garcetti* dispute. “There is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this court's customary employee-speech jurisprudence. We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching,” Kennedy wrote.

Justice Souter was not convinced. What the majority considers to be “beyond the pale of the First Amendment,” Souter wrote, “is spacious enough to include even the teaching of a public university professor, and I have to hope that today's majority does not mean to imperil the First Amendment protection of academic freedom in public colleges and universities, whose teachers necessarily speak and write ‘pursuant to official duties.’”

Souter drew the latter part of that quotation from the Supreme Court's 2003 decision in a University of Michigan affirmative action case, one in a long line of cases that expressed the court's commitment to “safeguarding academic freedom, which is of transcendent value to all of us

and not merely to the teachers concerned,” as the court put it in 1967.

To the dismay of advocates for academic freedom, and as outlined in several court cases in the AAUP report, Souter's prediction appears to have come true. The previously mentioned case of Juan Hong, a professor of chemical engineering at the University of California at Irvine, who maintains that he was unfairly denied a merit raise because comments he made in faculty meetings offended superiors, is an example. Some of those comments concerned personnel decisions. More generally, Hong said that his department was relying too much on part-time instructors to teach lower-division courses, and that students were entitled to full-time professors.

A federal district court dismissed the suit, saying that these discussions were part of the “official duties” of professors, and thus under the *Garcetti* decision were not entitled to First Amendment protection. The court did not determine whether the lost merit raise was related to the comments. The case is currently on appeal and the AAUP has filed a brief saying that the district court's analysis was “fatally flawed” in ignoring the “profound differences” between academic and other forms of employment.

Cary Nelson, national president of the AAUP, said that the association continues to believe that the courts that have applied *Garcetti* to public higher education have been in error, and said he expected that the association would continue to weigh in on the side of faculty members like Hong as their cases work their way through the legal system.

But Nelson said it didn't make sense to rely on an appeal to the Supreme Court to resolve the issue. “One is only willing to play Russian roulette with a certain number of the chambers filled,” he quipped.

Codifying an interpretation of academic freedom into college and university policies, he said, provides two defenses. For those who teach at those institutions, there is the protection of having their rights stipulated. But if the Supreme Court ever does consider this issue, Nelson said, there will be a clear record that speaking out on institutional issues is a standard part of academic life for faculty members. “If there is a case that comes before the court, there will be a history that arrives with the case,” he said.

Nelson noted that the Supreme Court has some history of “deferring to standard academic practice,” so there are gains to be made by defining standard academic practice to have a broad understanding of academic freedom. Reported in: *Chronicle of Higher Education* online, November 10, 30; [insidehighered.com](http://insidehighered.com), November 10. □

## success stories



### library

#### Ames, Iowa

A magazine about sex will stay where teens can find it at the Ames Public Library. The Library Board of Trustees voted 6–1 November 19 to support Director Art Weeks' recommendation to continue openly displaying and offering free copies of *Sex, Etc.* in the teen section.

Trustee Melody Warnick, however, said she agonized over the issue before casting the dissenting vote. "It is very frank and honest in a way that teens need," Warnick said, "but I agree with the Bannantines' complaint ... that we're privileging this magazine over everything else that we have in the library."

Joyce and John Bannantine presented a petition to the board in October with signatures of 118 parents with concerns about the topic and treatment of the magazine, which is written for teens by teens under the oversight of Answer, a national sexuality organization at Rutgers University.

"It is about this periodical being elevated above and beyond others," John Bannantine said.

*Sex, Etc.* is displayed in a rack in the teen section with about a dozen other magazines. Ten copies for which the library pays \$15 are also placed two at a time with information teens can take home without requiring sign-out.

"We're simply asking that it would not be given preferential treatment," said Tim Borseth, particularly since the articles can be "very difficult for some to read, offensive and biased."

However, most of the fifteen people who spoke at the board meeting attended by about forty people disagreed. "Libraries are not just where we keep the books, it's where we keep the information, and we've believe the information at libraries is factual," Susan Wallace, a writer and editor, said.

After reading the magazine, Wallace said, "I thought, 'Wow, this is wonderful.' It is peer to peer. It is professionally reviewed. I would urge you to keep this publication visible, accessible, open."

Kate Dobson, a junior at Ames High, said cataloguing *Sex, Etc.* with other periodicals would make it more difficult for teens to access information they need. "More recently than most people in this room, I went through sex education," Dobson said. "I came home from school in fifth grade with lots of questions, and I wasn't sure where to go for that information."

Etta Thornburg, another young woman, said she sought out that information from romance novels, but "I don't want kids ... getting their information from romances, because quite honestly, it's not accurate and it's not very realistic."

Harold Ault recalled getting information about sex through "word of mouth and the *National Geographic* magazine."

"If it was called Comments on Social Interactions from Rutgers University, I don't think people would get to it," he said. But in response to the Bannantines' fears that younger teens not seeking out the information could stumble upon the magazine, he said, "I had to hunt around the room to find it."

Ray Rodriguez, a parent and sexual-health professional, said that not only do many 12-year-olds know about sex, but "many of them ... engaging in sexual behavior are doing so based on myths ... that *Sex, Etc.* and its articles do a lot to dispel."

Tina Hopkins, who works in teen pregnancy prevention with Youth and Shelter Services, said, "It would be great if they got (accurate information) at home, but that's not what's happening."

Parent Justine Dvorchak-Rodriguez told the board, "*Sex, Etc.* can help my daughter deal with some of the questions she may not feel comfortable talking with me."

Trustee Sherry Meier addressed parents who asked the library to restrict access to *Sex, Etc.* to allow "the parents to be the parents." She said they can do that by monitoring what their child is reading. Trustee Al Campbell added, "This is a library and this is about access to information."

Trustee Harry Budd said he read two issues of the magazine, which publishes three times each year. An article in one issue made him a little uncomfortable, he said. "Thankfully," Budd said, "not everything in this library conforms with my beliefs and values." Reported in: *Ames Tribune*, November 20. □

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