

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



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## **CIA interrogation program faulted for brutality and deceit**

The Senate Intelligence Committee on December 9 issued a sweeping indictment of the Central Intelligence Agency’s program to detain and interrogate terrorism suspects in the years after the September 11 attacks, drawing on millions of internal CIA documents to illuminate practices that it said were more brutal—and far less effective—than the agency acknowledged either to Bush administration officials or to the public.

The long-delayed report delivers a withering judgment on one of the most controversial tactics of a twilight war waged over a dozen years. The Senate committee’s investigation, born of what its chairwoman, Senator Dianne Feinstein of California, said was a need to reckon with the excesses of this war, found that CIA officials routinely misled the White House and Congress about the information it obtained, and failed to provide basic oversight of the secret prisons it established around the world.

In exhaustive detail, the report gives a macabre accounting of some of the grisliest techniques that the CIA used to torture and imprison terrorism suspects. Detainees were deprived of sleep for as long as a week, and were sometimes told that they would be killed while in American custody. With the approval of the CIA’s medical staff, some prisoners were subjected to medically unnecessary “rectal feeding” or “rectal hydration”—a technique that the CIA’s chief of interrogations described as a way to exert “total control over the detainee.” CIA medical staff members described the waterboarding of Khalid Shaikh Mohammed, the chief planner of the September 11 attacks, as a “series of near drownings.”

The report also suggests that more prisoners were subjected to waterboarding than the three the CIA had acknowledged in the past. The committee obtained a photograph of a waterboard surrounded by buckets of water at the prison in Afghanistan commonly known as the Salt Pit, a facility where the CIA had claimed that waterboarding was never used. One clandestine officer described the prison as a “dungeon,” and another said that some prisoners there “literally looked like a dog that had been kenneled.”

The release of the report was severely criticized by current and former CIA officials, leaving the White House trying to chart a middle course between denouncing a program that President Obama ended during his first week in office, and defending a spy agency he has championed.

Obama welcomed the release of the report, but in a written statement made sure to praise the CIA employees as “patriots” to whom “we owe a profound debt of gratitude”

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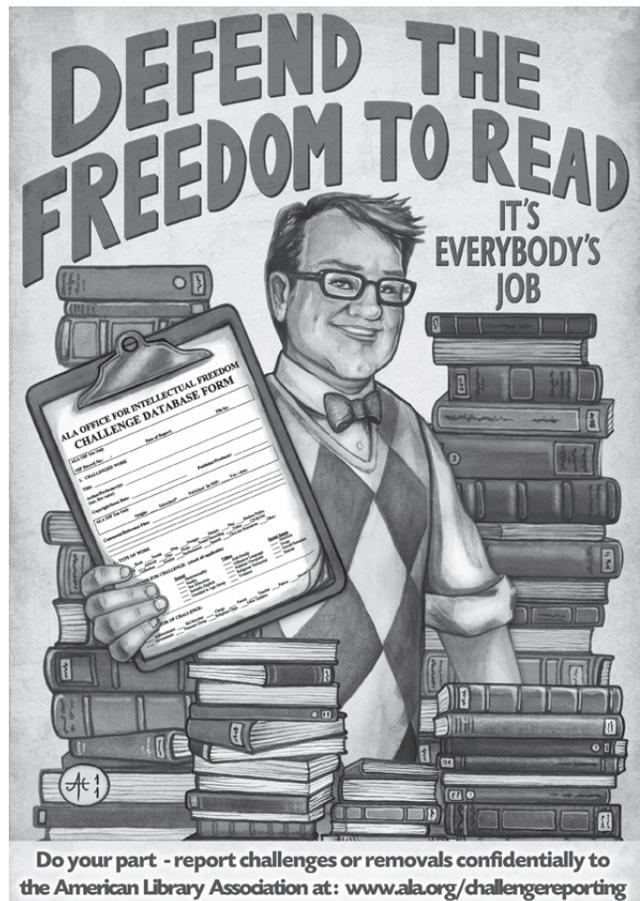
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## secret court extends NSA surveillance rules with no changes

A U.S. secret court has extended the authorization of the National Security Agency to continue surveillance of phone records in its current form, after a reform bill ran into difficulties in the Senate.

Besides stopping the NSA from collecting bulk phone records of Americans from phone companies, the USA Freedom Act aimed to restrict access of the NSA to these records by requiring the use of targeted selection terms. It also has a provision for the appointment of a special advocate tasked with promoting privacy interests in closed proceedings in the secret court.

The Foreign Intelligence Surveillance Court has reauthorized the NSA program for another 90 days at a request from the government, according to a statement December 8 by the offices of the Attorney General and the Director of National Intelligence. The order expires on February 27.

In the wake of revelations by former NSA contractor Edward Snowden that the government was collecting bulk phone metadata of Americans from Verizon, President Barack Obama announced reforms to the program earlier this year, including a plan to stop NSA from collecting and holding the data from operators in bulk.

Obama instructed that other than in an emergency, phone metadata could only be queried after a judicial finding that there was a reasonable, articulable suspicion that the selection term was linked to an approved international terrorist organization. He also directed that the query results must be limited to associated metadata within two hops, or connections, from the selection term instead of the earlier three. The two changes to the program have been made since February this year, according to officials.

For the plan that the phone records data should stay with telephone companies, Obama said the necessary legislation would be required. Last month, the USA Freedom Act ran into difficulties in the Senate, and could not be moved towards a final vote. The setback could delay any NSA reform until next year.

Senate Judiciary Committee chairman Patrick Leahy, the sponsor of the bill and a Democrat from Vermont, said Obama could end the NSA's dragnet collection of phone records once and for all by not asking for reauthorization of the program by the FISC.

"Doing so would not be a substitute for comprehensive surveillance reform legislation—but it would be an important first step," Leahy said in a statement.

Obama in November urged the Senate to pass the USA Freedom Act and officials in the administration, including Attorney General Eric Holder and Director of National Intelligence James Clapper, also backed it.

The revelations by Snowden triggered a number of

privacy suits in various courts challenging the legality of the NSA program. Reported in: *PC World*, December 9. □

## the war over net neutrality

President Barack Obama on November 10 offered his strongest endorsement to date for rules that would treat all Internet traffic equally, and Federal Communications Commission officials are now discussing net neutrality options with a divided Internet industry and Capitol Hill audience.

"An open Internet is essential to the American economy, and increasingly to our very way of life," Obama said (see page 5). "By lowering the cost of launching a new idea, igniting new political movements, and bringing communities closer together, it has been one of the most significant democratizing influences the world has ever known.

"Net neutrality' has been built into the fabric of the Internet since its creation—but it is also a principle that we cannot take for granted. We cannot allow Internet service providers (ISPs) to restrict the best access or to pick winners and losers in the online marketplace for services and ideas. That is why today, I am asking the Federal Communications Commission (FCC) to answer the call of almost 4 million public comments, and implement the strongest possible rules to protect net neutrality."

The notion of net neutrality—banning Internet providers from charging companies like Netflix or Disney more for a faster lane on the Web—is hugely popular among young, tech-savvy voters and liberals. But it enrages Republicans and major service providers who believe in a pay-to-play free market approach rather than treating the Web like a government-regulated utility.

In an editorial published the day before the president's announcement, the *New York Times* wrote:

"Under current rules, big phone and cable companies like Verizon and Time Warner Cable have the right to favor some types of Internet traffic over others. These companies could, for instance, ask Netflix and Amazon to pay extra fees to have their videos delivered to consumers ahead of content from competitors. This approach would greatly benefit large companies at the expense of smaller businesses, and would limit consumer choice and the ability of start-ups to compete on the web.

"This problem is a result of the commission's own doing. For years, legal experts have pleaded for rules that require cable and phone companies to treat all data on the Internet equally. But the FCC made huge mistakes in the past decade in classifying cable and phone-based broadband services as information services, which can be only lightly regulated, as opposed to telecommunications services, which are subject to far greater controls.

“Now Tom Wheeler, the FCC chairman, seems to be looking for a solution. He has not provided details about a new approach, but legal experts say it is based on several ideas that law professors, technology companies and public interest groups have been debating since the United States Court of Appeals for the District of Columbia Circuit in January struck down the commission’s previous rules, which the court said improperly applied telecommunications regulations to broadband service. The most straightforward solution would be to reclassify broadband as a telecommunications service and issue rules that prohibit phone and cable companies from giving preference to some Internet content.

“Broadband providers will, of course, fight reclassification tooth and nail. They say they can be trusted to treat all data fairly. But companies like Verizon and AT&T have previously said, in court hearings and public statements, that they do want to strike deals with businesses like Google to deliver their content faster to consumers.

“To avoid that political battle, Mr. Wheeler and his staff appear to be considering a hybrid approach that would regulate high-speed Internet service in two parts, as described in an April letter to the commission from Tejas Narechania and Tim Wu of Columbia Law School. A broadband carrier would be providing a lightly regulated information service when a consumer uses its network to send, say, emails or requests to Netflix for movies. But when a content provider like Netflix sends data to the consumer, that transmission would be classified as a telecommunications service, subject to far stricter regulatory oversight.

“This still leaves lots of unanswered questions. For example, would a hybrid approach leave consumers with fewer protections than businesses like Netflix and YouTube would have? Would exemptions from the rules be granted to broadband companies for particular services, like video gaming? And would any new rules apply to agreements like Netflix’s recent deals to pay Comcast, Verizon and AT&T to directly connect its streaming movie system to their networks?”

Republicans are ready to go to war over the issue. “Net neutrality is Obamacare for the Internet,” Sen. Ted Cruz (R-TX) tweeted shortly after the president’s announcement, while Rep. Marsha Blackburn (R-TN) dubbed the president’s proposal “a Trojan horse for a government takeover of the Internet.”

For every Republican decrying Obama’s push, there’s a Democrat emboldened by the president’s statement, saying robust rules are needed to prevent an Internet of haves and have-nots. “When the leader of the Free World says the Internet should remain free, that’s a game-changer,” Sen. Ed Markey (D-MA) said in a statement.

Obama’s vision would reclassify broadband as a public utility under Title II of the Communications Act, broadening the agency’s authority over Internet service providers

like Comcast and Verizon. He called for a ban on “paid prioritization,” the idea of ISPs charging content companies like Netflix for Internet fast lanes to consumers.

“This is a basic acknowledgment of the services ISPs provide to American homes and businesses and the straightforward obligations necessary to ensure the network works for everyone—not just one or two companies,” the president said in the statement.

But reclassification of broadband is expected to meet significant resistance on Capitol Hill. While lawmakers can’t stop the FCC from issuing new rules, the soon-to-be Republican Congress could grill FCC Chairman Tom Wheeler and alter the debate by rewriting the foundational laws governing the telecommunications industry.

House Speaker John Boehner (R-OH) pledged that “Republicans will continue our efforts to stop this misguided scheme to regulate the Internet” in the next Congress. “Federal bureaucrats should not be in the business of regulating the Internet—not now, not ever,” he said in a statement.

Senate Minority Leader—and likely majority leader next year—Mitch McConnell pushed the FCC to reject Obama’s proposal, and Sen. John Thune (R-SD), who is expected to take over the powerful Senate Commerce Committee next year, called Obama’s position “stale thinking” that will “invite legal and marketplace uncertainty and perpetuate what has needlessly become a politically corrosive policy debate.”

Obama’s announcement threw Wheeler’s plans to write new rules by December into a tailspin. FCC officials confirmed that the year will pass without a commission vote on new rules.

Wheeler said he was “grateful for the input of the president and look[s] forward to continuing to receive input from all stakeholders, including the public, members of Congress of both parties, including the leadership of the Senate and House committees, and my fellow commissioners.”

But the chairman’s day got off to a bad start—even before the president’s comments. Net neutrality advocates blocked his driveway in protest as he tried to head off to work. Then by midmorning, Obama had backed him into a corner with his push for stronger rules beyond any hybrid solutions under consideration.

Veteran FCC watchers said they could not remember when a president had ever given such explicit thoughts to the commission—an independent agency. Officially, Obama can’t order the FCC to do anything. But the president’s policies tend to be reflected by the agency, and his latest move was made official when the Commerce Department submitted his statement to the commission calling on Title II regulation.

Previously scheduled FCC meetings with public interest advocates and technology companies went ahead, as did staff-level meetings on the Hill. Wheeler also met with tech

companies and plans to meet with broadband carriers this week, according to sources.

“Wheeler, pretty much, committed himself to looking at all the Title II issues,” said Public Knowledge President Gene Kimmelman, who attended one of the meetings with Wheeler. “If there was a doubt whether the Obama administration cared that much about this issue or was willing to fight a battle on that issue, even in Congress, that was laid to rest.”

Wheeler was told in advance that Obama was going to push the FCC to go further than originally expected. Jeff Zients, director of the National Economic Council and assistant to the president, told the chairman of the broad outlines of Obama’s announcement, according to FCC documents. A White House official described the meeting as “standard operating procedure.”

Most of the big telecommunications companies support the GOP philosophy. Comcast and the National Cable and Telecommunications Association attacked Obama’s call for Title II net neutrality rules, saying the approach would over-regulate the Internet.

“We are stunned the President would abandon the longstanding, bipartisan policy of lightly regulating the Internet and calling for extreme Title II regulation,” said NCTA President and CEO Michael Powell, himself a former FCC chairman. “There is no dispute about the propriety of transparency rules and bans on discrimination and blocking, but this tectonic shift in national policy, should it be adopted, would create devastating results.”

Comcast Executive Vice President David Cohen also derided Obama’s approach. “To attempt to impose a

*(continued on page 21)*

## President Obama’s statement on net neutrality

*The following is the full text of President Barack Obama’s statement on net neutrality, issued by the White House on November 10:*

An open Internet is essential to the American economy, and increasingly to our very way of life. By lowering the cost of launching a new idea, igniting new political movements, and bringing communities closer together, it has been one of the most significant democratizing influences the world has ever known.

“Net neutrality” has been built into the fabric of the Internet since its creation—but it is also a principle that we cannot take for granted. We cannot allow Internet service providers (ISPs) to restrict the best access or to pick winners and losers in the online marketplace for services and ideas. That is why today, I am asking the Federal Communications

Commission (FCC) to answer the call of almost 4 million public comments, and implement the strongest possible rules to protect net neutrality.

When I was a candidate for this office, I made clear my commitment to a free and open Internet, and my commitment remains as strong as ever. Four years ago, the FCC tried to implement rules that would protect net neutrality with little to no impact on the telecommunications companies that make important investments in our economy. After the rules were challenged, the court reviewing the rules agreed with the FCC that net neutrality was essential for preserving an environment that encourages new investment in the network, new online services and content, and everything else that makes up the Internet as we now know it. Unfortunately, the court ultimately struck down the rules—not because it disagreed with the need to protect net neutrality, but because it believed the FCC had taken the wrong legal approach.

The FCC is an independent agency, and ultimately this decision is theirs alone. I believe the FCC should create a new set of rules protecting net neutrality and ensuring that neither the cable company nor the phone company will be able to act as a gatekeeper, restricting what you can do or see online. The rules I am asking for are simple, common-sense steps that reflect the Internet you and I use every day, and that some ISPs already observe. These bright-line rules include:

- **No blocking.** If a consumer requests access to a website or service, and the content is legal, your ISP should not be permitted to block it. That way, every player—not just those commercially affiliated with an ISP—gets a fair shot at your business.
- **No throttling.** Nor should ISPs be able to intentionally slow down some content or speed up others—through a process often called “throttling”—based on the type of service or your ISP’s preferences.
- **Increased transparency.** The connection between consumers and ISPs—the so-called “last mile”—is not the only place some sites might get special treatment. So, I am also asking the FCC to make full use of the transparency authorities the court recently upheld, and if necessary to apply net neutrality rules to points of interconnection between the ISP and the rest of the Internet.
- **No paid prioritization.** Simply put: No service should be stuck in a “slow lane” because it does not pay a fee. That kind of gatekeeping would undermine the level playing field essential to the Internet’s growth. So, as I have before, I am asking for an explicit ban on paid prioritization and any other restriction that has a similar effect.

If carefully designed, these rules should not create any undue burden for ISPs, and can have clear, monitored

exceptions for reasonable network management and for specialized services such as dedicated, mission-critical networks serving a hospital. But combined, these rules mean everything for preserving the Internet's openness.

The rules also have to reflect the way people use the Internet today, which increasingly means on a mobile device. I believe the FCC should make these rules fully applicable to mobile broadband as well, while recognizing the special challenges that come with managing wireless networks.

To be current, these rules must also build on the lessons of the past. For almost a century, our law has recognized that companies who connect you to the world have special obligations not to exploit the monopoly they enjoy over access in and out of your home or business. That is why a phone call from a customer of one phone company can reliably reach a customer of a different one, and why you will not be penalized solely for calling someone who is using another provider. It is common sense that the same philosophy should guide any service that is based on the transmission of information—whether a phone call, or a packet of data.

So the time has come for the FCC to recognize that broadband service is of the same importance and must carry the same obligations as so many of the other vital services do. To do that, I believe the FCC should reclassify consumer broadband service under Title II of the Telecommunications Act—while at the same time forbearing from rate regulation and other provisions less relevant to broadband services. This is a basic acknowledgment of the services ISPs provide to American homes and businesses, and the straightforward obligations necessary to ensure the network works for everyone—not just one or two companies.

Investment in wired and wireless networks has supported jobs and made America the center of a vibrant ecosystem of digital devices, apps, and platforms that fuel growth and expand opportunity. Importantly, network investment remained strong under the previous net neutrality regime, before it was struck down by the court; in fact, the court agreed that protecting net neutrality helps foster more investment and innovation. If the FCC appropriately forbears from the Title II regulations that are not needed to implement the principles above—principles that most ISPs have followed for years—it will help ensure new rules are consistent with incentives for further investment in the infrastructure of the Internet.

The Internet has been one of the greatest gifts our economy—and our society—has ever known. The FCC was chartered to promote competition, innovation, and investment in our networks. In service of that mission, there is no higher calling than protecting an open, accessible, and free Internet. I thank the Commissioners for having served this cause with distinction and integrity, and I respectfully ask them to adopt the policies I have outlined here, to preserve this technology's promise for today, and future generations to come. □

## **Downs Award given to Orland Park Public Library staff, board of trustees**

The staff and board of trustees of the Orland Park (Illinois) Public Library are the 2014 recipient of the Robert B. Downs Intellectual Freedom Award given by the faculty of the Graduate School of Library and Information Science (GSLIS) at the University of Illinois at Urbana-Champaign and cosponsored by Libraries Unlimited. Mary Weimar, director of the library, and Nancy Healy, president of the board, will accept the award at the Downs Intellectual Freedom Award Reception held during the midwinter meeting of the American Library Association (ALA).

The library's staff and board are being honored for defending the principles of intellectual freedom as described in the ALA's *Library Bill of Rights*. This year, they received strong opposition to their policy of not filtering adult Internet access in the library. The protracted controversy elicited an intense public response and received a great deal of attention in the Chicago metropolitan area.

In the nomination letter for the award, Barbara Jones, director of the ALA Office for Intellectual Freedom (OIF), wrote: "I have never experienced in person such vicious attacks on a staff simply trying to do their job, and a board of trustees that has remained steadfast in its support for the freedom to read. I don't use the word, 'steadfast,' frivolously. This controversy over filtering the adult Internet terminals has been going on for almost a year now and has not stopped—despite the fact that the courageous board of trustees voted NOT to filter."

In this challenging context, the library's staff and board of trustees have sustained their commitment to the principles established in the *Library Bill of Rights* and to defending intellectual freedom in libraries. In doing this, they provide an excellent example of the resolve and commitment to intellectual freedom demonstrated in the professional life of Robert B. Downs in his role as an author and scholar while serving as dean of the University of Illinois Library and GSLIS as well as his active participation in ALA.

In support of Robert B. Downs and his efforts, Libraries Unlimited honors award recipients each year by providing an honorarium and co-sponsoring an awards reception.

The Robert B. Downs Intellectual Freedom Award is given annually to acknowledge individuals or groups who have furthered the cause of intellectual freedom, particularly as it affects libraries and information centers and the dissemination of ideas. Granted to those who have resisted censorship or efforts to abridge the freedom of individuals to read or view materials of their choice, the award may be in recognition of a particular action or long-term interest in, and dedication to, the cause of intellectual freedom. The award was established in 1969 by the GSLIS faculty to honor Downs, a champion of intellectual freedom, on his twenty-fifth anniversary as director of the school. □

## censorship dateline



## schools

### Middletown, Delaware

Appoquinimink School Board of Education members took on the issue of appropriate reading material for students at their monthly meeting December 9 after a newly-drafted measure was put before the board to give parents a stronger say on what books their children may or may not read.

Nine people spoke up during the delegations portion of the meeting, most in favor of stopping the district from adopting a policy they deemed unprecedented and controversial. The measure, which was presented to the board by the district's director of secondary education, Ray Gravuer, would require a teacher to distribute permission slips to students that a parent would have to sign to allow his or her child to read any required class material. The measure would also apply to material a student chooses to read on his or her own.

If the parent does not give permission to read the material, the teacher would have to assign alternate reading material on the same subject matter, the draft measure states.

Gravuer told board members that the measure would help make sure the materials the students read are age appropriate.

"There has been concern and controversy within the district about the appropriateness of books and media sources," Gravuer told the board. "Just to be clear, we are not banning books or censoring books."

But most parents and students at the meeting reminded the board that a similar policy is already in place. According to Michael Wagner, whose daughter attends a school in the

district, parents already have a say in the matter.

"The district already accommodates any individual requests when parents and students have concerns about reading materials, and finds alternate solutions," Wagner told the board. "We do not need a policy for parental restriction of reading material—it is already being done on request, and what is being proposed will be impossible to implement without broad strokes of censorship which is not appropriate in a public school system."

Parents like Wagner also argue that the books in the school library have received the approval of the American Library Association (ALA) so that students have access to a wide variety of reading material.

The school district's proposed measure stems from an incident that occurred at the end of the last school year when a male student chose to partake in an extracurricular literature circle led by a female librarian at Appoquinimink High School. The group, made up of mostly female students, was reading *Identical* by Ellen Hopkins. The book deals with the story of a child who was sexually abused by her father.

According to Jim Chevalier, the senior pastor at Friendship Baptist Church in Glasgow, his son—the only male student in the literature circle—brought the book home and expressed concern with its content. Soon after, Chevalier began circulating a petition to require the school district to adopt a process for ensuring that all material was age appropriate.

"The book had explicit sexual content in it," Chevalier told the board. "...[This] runs counter with the values that I as a parent spouse (sic). It's nice to see your concern as a board with protecting the rights and values of me as a parent and with regard with the content and accessibility of items to minors. I'm very pleased that you are taking this on."

Other parents, however, warned the school district against agreeing to a measure that could take away a student's ability to learn about issues they may be dealing with and seek help. "If even one student sees themselves in a book with difficult subject matter—make no mistake folks, there are children in our community who are victims of abuse, of incest. There are children cutting themselves," said Maria Poole. "And, these books are not a roadmap to that. These books allow a child to see themselves and not be put in a corner and be marginalized and perhaps reach out and get the help that they need."

Graver told the board that he did not need their vote in order to adopt the measure he had proposed. But board member Richard Forsten said that the matter needed a chance for more public input before it is finalized. Reported in: *Middletown Transcript*, December 10.

### Highland Park, Texas

At Highland Park High School, parents must now give permission for their child to read the classics.

Teachers recently sent home permission slips for *The Adventures of Huckleberry Finn*, by Mark Twain; *The Scarlet Letter*, by Nathaniel Hawthorne; and *A Farewell to Arms*, by Ernest Hemingway, for eleventh-grade Advanced Placement English students, who elect to take the college-level course.

“Please bear in mind that some literary selections possess mature content that some individuals may find objectionable,” the form says. The permission slips are part of the response to an intense debate among parents over whether certain books are too mature for teens.

At a November 11 board meeting, Highland Park Independent School District trustees charged administrators with reviewing the district’s policy on selecting “instructional resources,” such as library acquisitions and textbooks. Issues include the role of parents vs. teachers in making selections and how to pick challenging literature that is age appropriate.

The board took action after Superintendent Dawson Orr said the policy’s weaknesses were highlighted by the book debate. Trustees requested the administration return in December with ideas for revisions.

Over the previous few months, parents and community members were embroiled in debate about books on the Highland Park High School’s approved book list that include sex scenes, explicit language and references to rape, abortion and abuse. The debate gained intensity—and nationwide attention—when Orr temporarily suspended seven books in September. He reversed the decision after backlash from alumni, parents and authors, including Pulitzer Prize-winning novelist Toni Morrison.

Among the proposals considered by the school board was one to ban books on the American Library Association’s list of most challenged titles. In response, Barbara Jones, Director of ALA’s Office for Intellectual Freedom, on October 14 wrote board president Leslie Melsen:

“I am writing to you and to the members of the Highland Park Board of Education on behalf of the American Library Association’s Office for Intellectual Freedom. We understand that the Board may be considering a number of proposals to label certain books as ‘objectionable’ and to require students to obtain written parental permission to study these texts that have otherwise been approved as educationally suitable by your faculty and scholastic bodies such as the College Board. We are deeply concerned about these proposals, particularly the proposal to use the American Library Association’s annual Top Ten Most Frequently Challenged and Banned Books List as a means of identifying so-called ‘objectionable texts.’ We believe that identifying books as ‘potentially objectionable’ and requiring permission slips for each individual assignment is a censor’s tool intended to prejudice opinion and discourage the use of the targeted books by students, parents, and faculty alike. Such ‘soft censorship’ only serves to impair the educational process and deny each student’s right to

read and learn from complex and challenging texts in preparation for college and career.

“Although we applaud a parent’s active participation in her student’s education, OIF does not believe books should come with a list of objectionable content. HPISD policy already requires teachers to provide parents with a syllabus describing each title assigned during the course of the year, allowing a parent ample opportunity to review the assigned texts. To prejudice parents, students, and the public against certain titles by requiring permission slips or labeling books as “objectionable” impairs academic freedom and can rise to a First Amendment violation, especially when such actions are done in a manner that suggests official endorsement of narrow sectarian or partisan views. We encourage you to trust your teachers’ experience and knowledge in selecting both classic and contemporary literature that engages the student while achieving the educational goals you have established for the English curriculum.

“In this regard, the American Library Association’s Top Ten Most Frequently Challenged or Banned Books List is not and has never been a judgment on the quality or educational suitability of a work or a valid designation that the book is ‘objectionable.’ This is especially so since many challenges to books are determined to be without merit. Indeed, many challenges are motivated not by a challenger’s concern about educational suitability but instead by the challenger’s discriminatory and often unconstitutional beliefs regarding literature that incorporates themes and elements addressing race, religion, homosexuality, or unorthodox views. These biased and uninformed challenges, often disguised as an ‘unsuited for age group’ objection, should never be used as grounds for determining restrictions on public school books and curricula. Employing the ALA’s Top Ten Most Challenged or Banned Books List as a curriculum standard substitutes the unthinking opinion of a crowd for the considered judgment of the professional educators on your faculty.

“Moreover, delegating the Board’s legal authority to determine what books may be freely taught in the classroom to a private association like the ALA raises certain due process issues, especially when the criteria used to determine the ALA Top Ten Most Frequently Challenged and Banned Books list are not narrowly and reasonably drawn definitive standards but the mere circumstance that someone, somewhere, complained about the book for any one of a number of reasons. See *Motion Picture Association v. Specter*, 315 F.Supp. 824 (E.D. Pa 1970) (use of MPAA ratings to identify films and previews “not suitable” for children was improper delegation of legislative authority to a private entity. The statute that penalized exhibitors who showed such films and previews was found unconstitutional for vagueness).

“In addition, the requirement that students submit parental permission slips in order to read and study a “disfavored” book may constitute an impermissible and

unconstitutional infringement on a student's constitutional rights. In *Counts v. Cedarville School District*, 295 F. Supp. 2d 996 (W.D. Ark. 2003) a federal court set aside a school board's requirement that students submit a written parental permission slip to access the Harry Potter series. It held that the stigmatizing effect of having to obtain parental permission to check out the books from the school library constituted a restriction on access that violated the students' First Amendment rights, given that the books had been restricted because school board members 'dislike[d] the ideas contained in those books.'

"Although we are often tempted to shield students as long as possible from the world's more difficult realities, limiting access to books does not protect young people from the complex and challenging world that confronts them. Rather, it can deprive them of information that is important to their learning and development as individuals. Once a book has been selected and approved by faculty members pursuant to the standards outlined in the district's materials selection policy, any decision on whether to limit a student's access to materials is most appropriately made by a student's parents, who are best equipped to know and understand their child's intellectual and emotional development. But those parents should not be given the power to restrict other students' ability to read and learn from the book.

"We understand the need to address a parent's concern about a particular book. If a parent has a concern with a chosen text, we strongly encourage you to adopt a transparent and consistent reconsideration procedure to review the book and a policy that allows parents and students to request an alternative text when they have a sincere objection to an assigned book. Many school districts have implemented an 'opt-out' plan where an alternative book can be offered if a parent doesn't want their child to read the book in the curriculum. This option still supports your teachers and offers much less disruption to the classroom.

"Numerous Highland Park teachers, students, and parents are protesting this attempt to curtail their academic freedom. We urge you to respect and support the judgments of teachers, librarians, and other educators who select instructional materials based on professional and educational standards in order to serve the needs of all members of your diverse community. Further, we encourage you to consider the views of those parents in your community who have spoken out in support of those faculty members and in favor of a broad education that serves everyone. They demand transparency and direct, clear communication. They want their school board and committees to be fair, balanced, and unbiased. They want their children to be 'challenged by educational resources chosen with professional judgment.' They want their teachers to be respected and secure in their jobs. Parents have spoken with emails and letters. They have worn orange ribbons in solidarity. They have sent flowers to the school in sympathy for the teachers

who have been forced into a chaotic and fearful working environment. Parents are asking that their children's minds be stretched and opened. They are looking for books that are going to broaden their students' horizons and teach them about people, places, and situations that reach beyond their hometown.

"Adoption of policies that label 'bad books' and require permission slips to read those books reflect a view that all members of the HPISD community hold the same values when in fact there is actually a wide range of beliefs and attitudes about what kinds of books should be read in the classroom and how those books should be taught. We respectfully ask that you reject these policies and affirm that students in the Highland Park Independent School District will always be able to obtain a high quality nonsectarian and nonpartisan education."

Now, one challenged book, *The Art of Racing in the Rain*, by Garth Stein, is under review by a committee of parents, staff and students. It will remain in use until a final decision is made.

Walter Kelly, the high school principal, said the district has already addressed some of parents' concerns: The English department froze course overviews so that teachers can't make changes. Books on the approved reading list were categorized to indicate if they are currently in use and if they are required or optional reading. Teachers set up an English department review committee to discuss possible additions to the book list.

In twelfth-grade AP English, students have required reading but also must choose books of certain genres for some assignments. Kelly said teachers will no longer hand out a list of books for reading choices to avoid the appearance of endorsing or limiting books. Teachers can talk to students about selecting books if they need guidance, however.

The English teachers are also discussing how to best offer comparable alternatives to parents who opt out of a book for their child, Kelly said.

"I want to make sure we have high quality control, so we stabilize this for now," Kelly told the board.

Helen Williams, the district spokeswoman, said that the new parent permission forms for *The Adventures of Huckleberry Finn*, *The Scarlet Letter* and *A Farewell to Arms* reflect teachers' "commitment to transparency with parents."

"We are in the process of finalizing the list of titles that require parental permission," Williams said. "That information will be included in the list, which will be posted on Friday. It will allow all parents, students and teachers to have a common understanding of which titles require permission."

Parents weighed in on all sides of the issue at the board meeting. Dana Nahlen, a high school parent, said she's concerned parent criticism could have a chilling effect on the high school's book selections. She credited her own

education and love of literature for inspiring her to “dream big” in a single-parent home.

“My concern now is the less transparent ways that pressure is being put on our teachers to avoid books,” she said. “It is a good goal to say that books should be age appropriate. It is a good goal to say we don’t want to have anyone to opt out. But the only way you get to where no one opts out is if you take all diversity of thought out of the literature.”

Natalie Davis, another high school parent, said she also worries that controversy over mature themes could water down the rigor of English classes. “You must rise above the banter and find your compass as leaders,” she said. “That compass is academic excellence.”

Tommy Stewart, a University Park council member, addressed the board as a concerned citizen and grandparent. “I’ve heard a lot of comments from one side about not holding back our teachers, ‘Let our teachers teach,’” he said. “The teachers can teach, and I think there’s plenty of materials out there without using explicit sexual content.” Reported in: *Dallas Morning News*, November 12.

### **Hanover County, Virginia**

Hanover County school administrators have sent all principals a list of instructional materials that teachers now need a principal’s permission to use in class, including the film “Thomas L. Friedman Reporting: Searching for the Roots of 9/11.”

The list also consists of five books that have prompted written complaints since 2007. The memo states teachers are now required to send notification to parents if they use any of these materials and provide an alternative assignment for families who opt out.

The books on the list are *Thou Shalt Not Dump the Skater Dude*, by Rosemary Graham; *So Far From the Bamboo Grove*, by Yoko Watkins; *The Color Purple*, by Alice Walker; *The Well*, by Mildred D. Taylor; and *Thirteen Reasons Why*, by Jay Asher.

The memo includes a summary of the complaints for some of the materials, which includes derogatory language, sexual content, misrepresentation of cultures, historical inaccuracies and anti-American sentiments. It also includes procedures for teachers to follow after obtaining permission to use the material. For example, teachers who show the Friedman film must provide other perspectives on the events of September 11, 2001.

The release of the memo was part of a review of the School Board controversial material policy, which was prompted by residents and public officials who raised concerns about the Friedman film at numerous public meetings.

Hanover schools spokesman Chris Whitley emphasized that the full review of the controversial material policy would be presented at the School Board meeting in

December. He added that if the School Board adopts new policies as a result of the review, those new policies will provide more detailed directions for how the schools handle controversial material.

The current School Board policy requires, in part, that supplementary instructional materials be reviewed by officials and their observations shared with the principal. Superintendent Jamelle S. Wilson said this policy applies to such items as textbooks but not to videos.

In September, Hanover Board of Supervisors Chairman Sean Davis disapproved of the use of the film. Clips from the film have been shown in two history classes at Hanover High School for the past four years, Wilson said.

The hour-long film documents Muslim sentiments toward America in the Middle East and explores how oppression, poverty and religious extremism all contribute to the emergence of radical groups in the Mideast.

School officials told School Board members and supervisors at a meeting of the Hanover Joint Education Committee in October that Hanover High School students viewed other videos in addition to the Friedman film. Those other materials include former President George W. Bush’s speech to America after the tragedy and a country song that paid tribute to the victims.

Assistant Superintendent Michael Gill said during the October meeting that the Hanover High School lessons plan did not violate the school system’s current controversial issues policy, which states that “teachers should strive to present all sides of a given issue to students in a dispassionate manner.”

During the November School Board meeting, about a dozen Hanover residents spoke against the use of the film and demanded the school prohibit it from classrooms. Some speakers suggested watching the film will cause students to become violent and anti-American.

Dale Gouldman, a Hanover resident, said the film could incite violence. “Will it cause a student to join a terrorist group? Maybe, maybe not, but it is more likely to cause a student to feel like any action is permissible if they have been treated unfairly,” Gouldman said. “And they will take action to redeem themselves up to and including a school shooting.”

Another speaker, Herbert Chittum, said the schools should teach American values and not “Islamic hatred of America.”

Matthew Gardner said there’s no value in understanding the hatred of America’s enemy. “Instead of sympathizing with our country’s enemy, how about we create a curriculum that supports this country,” Gardner said.

The school memo clearly spelled out these sentiments, stating those who filed complaints “expressed concern that as a result of watching this video a seed would be planted with students that would lead to both the support of terrorism

*(continued on page 22)*

## from the bench



## U.S. Supreme Court

The Supreme Court appeared split December 1 over whether or not prosecutors need to prove that someone intends to carry out a threat posted on Facebook in order to punish them.

Many of the Court's traditional conservatives seemed to oppose the idea that people should be judged on their intentions, not just their actions, as they heard a case that could have a profound impact on communications on the Internet. The Court's more liberal judges, meanwhile, appeared supportive of narrowing the exception to the Constitution's right to free speech.

"We've been loath to create more exceptions to the First Amendment," said Justice Sonia Sotomayor.

The divide could foretell a tight ruling over whether or not a man should have received jail time for violent rap lyrics he posted on Facebook.

Anthony Kennedy, the traditional swing justice on the high court, said he feared a sweeping ruling could penalize not just people making threats they don't intend to carry out, but also people telling the police about what they overheard someone else say.

Taken to an extreme, the government's argument is that "the person who overhears [something incriminating] and repeats it is liable," he said.

The case centers on Anthony Elonis, a Pennsylvania man who had adopted the rap persona Tone Dougie. The posts, long tirades in the form of rap lyrics, were punctuated by brutally violent language, most of it directed against his estranged wife. In 2010, he was fired from his job at a local amusement park after posting a picture on the social

network from a Halloween event in which he held a knife to a co-worker's neck. "I wish," he wrote in the caption.

Later, he posted a series of violent rants against his estranged wife outlining how he "would have smothered" her with a pillow "dumped your body in the back seat, dropped you off in Toad Creek and made it look like a rape and murder."

He wrote that he would like to see a Halloween costume that included his wife's "head on a stick." He talked about "making a name for myself" with "the most heinous school shooting ever imagined," saying, "Hell hath no fury like a crazy man in a kindergarten class." In another post, he fantasized about slitting the throat of an FBI agent and "leave her bleedin' from her jugular in the arms of her partner."

Some of the posts contained disclaimers or indications that they aspired to be art or therapy. At Elonis's trial, his estranged wife testified that she understood the posts as threats. "I felt like I was being stalked," she said. "I felt extremely afraid for mine and my children's and my family's lives."

Elonis was convicted under a federal law that makes it a crime to communicate "any threat to injure the person of another." He was sentenced to 44 months.

Elonis claims that he never intended to actually carry out the threats, and that juries should take people's intentions into account when determining whether or not a rant counts as a "true threat" under the law.

John P. Elwood, a lawyer for Elonis, said his client's posts included elements of entertainment. Justice Samuel A. Alito Jr. responded warily.

"This sounds like a road map for threatening a spouse and getting away with it," Justice Alito said. "You put it in rhyme and you put some stuff about the Internet on it and you say, 'I'm an aspiring rap artist.' And so then you are free from prosecution."

The Supreme Court has said that "true threats" are not protected by the First Amendment, but it has not been especially clear about what counts as such a threat. Justice Anthony M. Kennedy said the term itself was unhelpful.

"I'm not sure that the court did either the law or the English language much of a good service when it said 'true threat,'" he said. "It could mean so many things."

The question for the justices in *Elonis v. United States*, was whether prosecutors had done enough to prove Elonis's intent. Michael R. Dreeben, the government lawyer, said the words and their context were enough.

The standard proposed by the government, he said, would hold people accountable "for the ordinary and natural meaning of the words that they say in context."

Some of the Court's conservative-leaning justices appeared unconvinced. Justice Samuel Alito questioned whether Elonis's lawyers were proposing that police would "have to get into the mind" of psychopaths intent on shooting up elementary schools.

“Congress wanted to say this is okay?” he asked incredulously.

Justice Elena Kagan, who usually aligns with liberal justices, countered that except for the federal rules over “fighting words,” the law does not declare: “It’s just that you should have known.”

“That’s not the standard that we typically use with regard to the First Amendment,” she said. Kagan seemed to make the case for some type of middle-ground “buffer zone” in the law.

Chief Justice John G. Roberts Jr. cited an unlikely source: the rapper Eminem. Treading gingerly, the chief justice quoted vivid lyrics from “’97 Bonnie and Clyde,” in which Eminem seems to threaten to drown his wife. “Could that be prosecuted?” Chief Justice Roberts asked Dreeben.

Dreeben said no and started to say something about context. Chief Justice Roberts interrupted. “Because Eminem said it instead of somebody else?” he asked.

Supporters of Elonis’s argument say that the government’s case against him could lead to a chilling clampdown of free speech on the Internet. While threats against President Obama and other elected officials have been rising on Twitter and Facebook, for instance, it can often be incredibly difficult to tell whether or not someone is just being sarcastic or blowing off steam.

That’s even truer when it comes to a loved one, argued Justice Stephen Breyer. “People do say things in domestic disputes that they’re awfully sorry about later,” he said.

Actual threats of violence, however, are “rather unusual,” retorted Justice Antonin Scalia, “even in the heat of anger.”

The American Civil Liberties Union and other free speech groups filed friend-of-the-court briefs ahead of the case supporting Elonis, as did multiple advocacy groups ranging from the People for Ethical Treatment of Animals (PETA) to anti-abortion activists.

Ignoring someone’s intentions would mean that “virtually any language that uses forceful rhetoric could be penalized,” Elonis’s lawyer, John Elwood, argued before the nine justices.

Elwood said prosecutors should have to prove that the speaker’s purpose was to threaten someone. Failing that, he said, prosecutors should at least have to prove that the speaker, whatever his or her purpose, knew “that it’s a virtual certainty” that someone would feel threatened.

The lower courts sided with the government. All the prosecution had to prove, the trial judge ruled, was that a “reasonable person” would foresee that others would view statements “as a serious expression of an intention to inflict bodily injury or take the life of an individual.”

“This is distinguished,” the judge said, “from idle or careless talk, exaggeration, something said in a joking manner or an outburst of transitory anger.”

Elwood brought up the recent unrest in Ferguson, Missouri. He warned that siding with the government could give police a right to jail someone who posts a picture of the

protests accompanied by Thomas Jefferson’s famous quote that “the tree of liberty must be refreshed from time to time with the blood of patriots and tyrants.”

On the other side of the argument, a number of anti-domestic violence advocates filed briefs in support of the government’s case that juries do not need to consider someone’s intention.

“The individual has to know and understand what the individual is saying,” Dreeben argued. Context, he argued, should make it clear whether someone is an aspiring rapper trying to get their start or clearly making someone afraid for their life.

“The speaker chooses their audience,” he said, which is even truer on sites like Facebook that let users decide exactly who can see their posts. Public threats, he argued, “are highly disruptive to society,” whether or not people actually intend to carry them out.

Elwood, attempted to show how the man had tried to make clear that his posts were meant as rap lyrics, not actual threats. Making a disclaimer that everything is purely for entertainment, however, “sounds like a roadmap for threatening a spouse and then getting away with it,” Alito said. Reported in: *The Hill*, December 1; *New York Times*, December 1.

Begging is a crime in much of Worcester, Massachusetts. A city ordinance enacted last year banned “aggressive begging,” but it used an idiosyncratic definition of what counts as aggressive. It encompasses any begging—including silently asking for spare change with a cup or a sign—as long as it is within twenty feet of a bank, bus stop, pay phone, theater, outdoor cafe or anywhere people are waiting in line.

The Supreme Court has said asking for money is speech protected by the First Amendment. But in June, the federal appeals court in Boston rejected a challenge to the twenty-foot buffer zones, saying they were justified by the unease that panhandling can cause.

A week later, the Supreme Court struck down a Massachusetts law that had established 35-foot buffer zones around the state’s abortion clinics, including one in Worcester. The court said the law, which banned counseling, protests and other speech near the clinics, violated the First Amendment.

There was a tension between the two decisions, and lawyers for the plaintiffs in the begging case asked the appeals court to reconsider its ruling in light of the abortion case. The appeals court turned them down.

The Supreme Court will consider on January 9 whether to hear an appeal on the begging decision and bring some order and consistency to free speech in Worcester.

But there is an awkward element to the justices’ task. The author of the appeals court’s opinion was Justice David H. Souter, who retired from the Supreme Court in 2009 but continues to hear the occasional case as a visiting appeals court judge.

His opinion, for a unanimous three-judge panel, addressed a challenge brought by a homeless couple, Robert Thayer and Sharon Brownson. They live under a bridge, according to a sworn statement from Thayer. “We rely on money we receive from strangers,” he said, “which on a good day might be \$20 or \$25.”

“I continue to stand on sidewalks with my sign,” Thayer said, “because I have no other way of making money to survive. I understand that I am risking arrest, but I have no other choice.”

Justice Souter said the ordinance was permissible because begging can create “serious apprehensiveness, real or apparent coercion, physical offense or even danger.” He had said much the same thing in a 2000 concurrence in *Hill v. Colorado*, a Supreme Court decision that upheld buffer zones around abortion clinics in Colorado.

Those buffer zones, Justice Souter wrote in 2000, shielded “people already tense or distressed in anticipation of medical attention (whether an abortion or some other procedure) from the unwanted intrusion of close personal importunity by strangers.”

But the *Hill* decision, which Justice Souter cited in his begging opinion, was undermined in June by the Supreme Court’s decision in *McCullen v. Coakley*, which struck down buffer zones around abortion clinics in Massachusetts.

Chief Justice John G. Roberts Jr., writing for the majority in *McCullen*, said public streets and sidewalks play a special role in First Amendment jurisprudence. “Even today,” he wrote, “they remain one of the few places where a speaker can be confident that he is not simply preaching to the choir. With respect to other means of communication, an individual confronted with an uncomfortable message can always turn the page, change the channel, or leave the website. Not so on public streets and sidewalks. There, a listener often encounters speech he might otherwise tune out.”

David M. Moore, Worcester’s city solicitor, said he had no quarrel with either of two fundamental points: that begging is speech and that speech must be allowed in public places. “Solicitation in general is protected by the First Amendment,” he said. “We recognize that the streets are places for free expression,” he added. “We’re not trying to squelch free expression. We’re trying to squelch aggressive conduct.”

Moore said the speech the Supreme Court allowed near abortion clinics did not involve such conduct. “That was extremely benign counseling,” he said.

Matthew R. Segal, a lawyer with the American Civil Liberties Union of Massachusetts, which represents the homeless plaintiffs, said the two kinds of buffer zones were quite different. “The begging case is far easier,” he said. “There’s no clash of constitutional rights,” he added, referring to free speech and abortion.

In their Supreme Court brief, the plaintiffs accused Worcester of singling out poor people for censorship. “It is

not unlawful to stand near a bus stop with a sign advertising a yard sale,” the brief said, “but it is a crime to tell others at the stop that you need money for food while holding out a collection cup.”

Vincent Flanagan, the executive director of the Homeless Empowerment Project in Cambridge, Massachusetts, does not think much of the Worcester ordinance. He said it would devastate his group’s newspaper, *Spare Change News*, which is sold mostly by homeless people.

In a dense urban environment, he said, buffer zones cover all of the attractive places to ask for money. “If Boston were to implement a Worcester ordinance and were to lay a template over the city,” he said, “it would literally eliminate every profitable location.”

The ordinance, he said, is part of a larger trend. “Pure and simple,” he said, “people don’t want to be reminded that there are poor and homeless people in America.” Reported in: *New York Times*, December 8.

Oracle is trying to make sure its billion-dollar copyright dispute with Google over the Android OS doesn’t make it to the U.S. Supreme Court.

The companies have been battling for years over whether Google infringed Oracle’s copyright when it lifted programming interfaces from Java for use in its Android mobile OS.

There’s a lot of money at stake, with Oracle seeking at least \$1 billion for the alleged infringement. Some programmers are also watching the case, believing the outcome will affect their freedom to use other software APIs (application programming interfaces).

Oracle sued Google in district court four years ago, but it lost the case based on a decisive ruling by the presiding judge. This year an appeals court overturned that ruling, so Google asked the Supreme Court to hear the case.

“To hold unprotectable the thousands of lines of code Google copied would strip all code of copyright protection,” Oracle told the Supreme Court December 8, urging it to let the appeals court decision stand.

Google has argued that it had no choice but to copy parts of Java when it developed Android, because Java was already popular and programmers needed the familiar APIs to write Java programs. Such “functional” code isn’t even eligible for protection under U.S. copyright law, Google said.

That’s the central question Google wants the Supreme Court to decide. But Oracle says the law is already clear. “There is no dispute that Google was free to write its own code to perform the same functions as Oracle’s,” it’s lawyers wrote. “Instead, it plagiarized.”

The Supreme Court doesn’t agree to hear all cases, only those where it thinks it can settle an important point of law. If it declines to hear the case, it may be sent back to the district court for another trial. If it accepts the case, programmers will be watching to see the implications for copyright and APIs. Reported in: *PC World*, December 8.

## **national security**

### **Washington, D.C.**

A federal appeals court in the District of Columbia heard oral arguments November 4 over the constitutionality of the National Security Agency's mass collection of data about millions of Americans' phone calls.

The three-judge panel wrestled with key questions, including at what point a person's privacy rights become relevant—when the government gathers records known as metadata or when an analyst reviews the material. They pressed attorneys on whether a 1979 Supreme Court case about privacy rights in phone-call data applies to the NSA program.

The judges also questioned whether the plaintiff, legal activist Larry Klayman, a customer of Verizon Wireless, could bring suit if he could not prove his records were obtained by the NSA. The government has acknowledged that only one Verizon subsidiary—Verizon Business Network Services—has turned over data. Separately, sources have said that the government never sought Verizon Wireless's participation in the NSA program.

The roughly 90-minute session came two months after an appeals court in New York heard arguments in a separate constitutional challenge to the NSA collection—reflecting an apparent willingness of the judiciary to weigh the legality of certain government surveillance programs at a time when Congress seems unable to push through reforms.

At issue is a major counterterrorism program launched in secret after the 2001 terrorist attacks, put under court supervision in 2006 and revealed last year through a document leaked by former NSA contractor Edward Snowden. Klayman, the founder of Freedom Watch, filed suit shortly after the revelation, charging that the program violated Americans' constitutional rights.

U.S. District Court Judge Richard J. Leon found in Klayman's favor in December, saying the "almost-Orwellian" program "almost certainly" violated the Fourth Amendment. He issued a preliminary injunction, which he stayed, pending appeal.

The cases in New York and Washington, as well as a similar one in Seattle, are moving as Congress entered a lame-duck session in which legislation to curtail the program—drafted at President Obama's urging—appeared stalled. If lawmakers fail to act now, Congress will eventually be forced to address the issue because the underlying law that the government uses to justify the program expires in June.

Under that law, Section 215 of the USA PATRIOT Act, the NSA has been retrieving every day from U.S. phone companies the call logs of millions of Americans: numbers dialed, call length and time, but not call content. Analysts may review the records of numbers they reasonably suspect are linked to foreign terrorists.

"There is no protected constitutional interest that's been

invaded by the mere collection of the business records of a telephone company," said H. Thomas Byron III, an attorney with the Justice Department's civil division. Byron said the intrusion occurs only when an analyst actually reviews the data, and that, he said, happens only a small fraction of the time. He added that even if the gathering of data violates Americans' privacy, the restrictions that have been added by the Foreign Intelligence Surveillance Court make that intrusion reasonable.

Klayman argued that the mere collection, given its scale and duration, violates the Fourth Amendment, which guarantees that Americans be free from unreasonable searches.

But Judge Stephen Williams appeared skeptical, suggesting that he agrees with the government that the intrusion occurs not when the NSA collects the data, or queries it, but at "the third step," when the analysis begins.

Byron argued that under the 1979 ruling in *Smith v. Maryland*, Americans have no expectation of privacy in metadata, the information that phone companies log to keep track of use by their customers. "It's very clear that this information is owned by the telephone company, not by the subscribers themselves," he said.

Judge Janice Rogers Brown called such a distinction a "nice bright line," but she wondered whether it was valid. In a case involving medical records, she noted, the Supreme Court ruled that people have privacy rights in data about them held by a hospital.

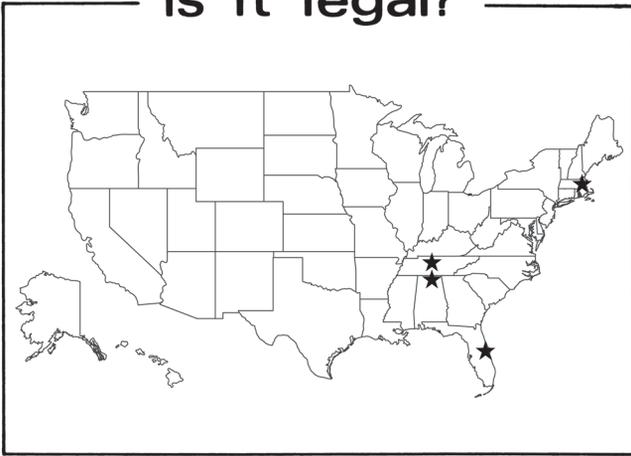
In the 1979 case, the court found that a criminal defendant had no expectation of privacy in the phone numbers he dialed, and it upheld the police's retrieval of that data without a warrant over a period of three days.

Klayman and several privacy groups argue that the 1979 case is a poor fit for the NSA program. Unlike the case of *Smith*, a robber who made threatening phone calls to his victim, the NSA program involves the "untargeted mass collection of the communication patterns of millions of people over many years," said Cindy Cohn, legal director of the Electronic Frontier Foundation, which, along with the American Civil Liberties Union, filed a friend-of-the-court brief in support of Klayman. "The government is trying to cram a very much larger program . . . into a pretty tiny box in *Smith*."

Cohn argued that the government's position—"don't worry, they're collecting everything because their protocols keep [people] safe"—is not sufficient. If that were the case, she said, "it would mean that the government could record every phone call, photocopy all the mail, demand all the membership lists of organizations and put a video camera in every bedroom and [say] it doesn't matter because they've got protocols and rules that say they can do it." Reported in: *Washington Post*, November 4.

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## is it legal?



## schools

### Huntsville, Alabama

An Alabama school district hired an ex-FBI agent and paid him six figures to investigate the social media activity of students, which eventually led to more than a dozen students being expelled.

Huntsville City Schools paid Chris McRae \$157,000 for school security improvements, which included the social media investigation. As a result of his findings, 14 students—12 of whom were African-American—were expelled last year.

Superintendent Casey Wardynski said the program relied on tips from students and teachers. The investigators, led by McRae, then looked for any guns or gang signs on the students' social media accounts.

The program resulted last year in investigations of 600 students out of the 24,000-student district. Huntsville City Schools expelled 305 students last year—of which 14 resulted from the social media program.

The district has had a contractual relationship with the firm that employs McRae since 2012. District spokespeople stressed that McRae does other work besides leading the social media investigations.

Some local officials saw a racial element to the probes. "That is effectively targeting or profiling black children in terms of behavior and behavioral issues," Madison County Commissioner Bob Harrison said. But one black school board member disagreed.

"These numbers tell me that I have kids with some major issues," Laurie McCaulley said. "What I think the board is

doing is trying to provide a safe environment for all children." Reported in: [talkingpointsmemo.com](http://talkingpointsmemo.com), November 3.

### Orange County, Florida

Worried about facing national ridicule if a Satanic group is allowed to give out coloring books to children, the Orange County School Board moved November 13 toward preventing any outside group from distributing religious materials on campus. The current policy has allowed groups to distribute Bibles and even atheist materials at district high schools in recent years.

The board discussed the issue during a workshop. The earliest it could vote to change the policy would be late January or early February, officials said.

"This really has, frankly, gotten out of hand," said chairman Bill Sublette. "I think we've seen a group or groups take advantage of the open forum we've had."

But a spokesman for The Satanic Temple, the group that wants to give out coloring books featuring cartoon children performing Satanic rituals and drawing pentagrams in school, said it is the School Board that is acting in bad faith.

"It strongly implies they never intended to have a plurality of voices," said Doug Mesner, co-founder and spokesman for The Satanic Temple, who also goes by the pseudonym Lucien Greaves.

An evangelical group called World Changers of Florida has given out Bibles in Orange schools three times. "We're looking forward to doing it again," said World Changers Vice President Greg Harper. The group has purchased materials and is gathering volunteers to give out the *New International Version* in 18 district high schools on January 16, he said.

However, district counsel Woody Rodriguez said the Satanists are the only group to have submitted a request.

Harper said he considers the possible policy change an attack on Christians. "They seem to be moving against the interests of a large part of the community," he said, likening it to the district's August decision to ban football chaplains at schools. "The Bible will open somebody's heart, somebody's mind, and cause them to pursue answers."

Board member Christine Moore also seemed to struggle with the effect of a policy change on Christian groups. "Everyone's upset about the Satanists and the atheists coming," she said.

But another group involved in the debate sees an upside. "It's a bit of a relief," said David Williamson of the Central Florida Freethought Community. His group distributed atheist materials in 2013 as a protest against Bible distributions.

Rodriguez said the district was bound by the terms of a federal consent decree that required Collier County schools to allow the same group to give out Bibles. "Given that there's a potential change in the policy, we won't be allowing distribution," he said. "We're going to wait." Reported in: *Orlando Sentinel*, November 13.

## Williamson County, Tennessee

A school board in Tennessee is being accused of violating the constitutional rights of students over a policy that allows school officials to search any electronic devices students bring to campus and to monitor and control what students post on social media sites.

The broadly written policy also allows schools to monitor any communications sent through or stored on school networks, which would essentially allow the school to read the content of stored and transmitted email.

The policy is intended to “protect students and adults from obscene information,” “restrict access to materials that are harmful to minors” and help secure the school’s network from malware. But parts of the policy are so broadly written, they constitute clear violations of the First and Fourth Amendments, according to the American Civil Liberties Union of Tennessee and the Electronic Frontier Foundation. They say the policy oversteps the school’s authority and exhibits “a fundamental misunderstanding of the constitutional rights” of students.

Disciplinary actions for failing to follow the rules are also problematic, the groups say. Under the policy, failure to comply can result in “loss of network privileges, confiscation of computer equipment, suspension ... and/or criminal prosecution.”

The Tennessee policy would allow authorities to seize and search a device for no compelling reason.

The groups note that denying students access to school computers and networks that are needed for their education essentially denies them the right to an equivalent education that other students obtain. Requiring students to sign an agreement essentially waiving their constitutional rights is also not permissible.

The two groups sent a letter October 27 to the Williamson County Board of Education after parent Daniel Pomerantz complained that he was forced to agree to the policy. He initially refused to sign the policy at the start of the school semester, but relented after the school prohibited his 5-year-old daughter from using the computers at Nolensville Elementary School without the agreement.

“The first time they were using the computers [in her classroom], they told her she had to go sit aside and do something else and she started to cry and complain,” Pomerantz said. “It was not a pleasant experience as a family. They told her it was all because of me, that [because] I wouldn’t do this was why she couldn’t learn on computers with all the other students.”

There are 41 schools in the Williamson school district, and the policy affects all 35,000 students.

The policy contains a number of points that on their face seem designed to protect the privacy and safety of students. For example, students must provide consent before their photo, name or work can be posted on a school web site or in a school publication. Students are also required to report any “electronically transmitted attacks” made by others.

But the sections pertaining to the school’s Bring Your Own Technology policy and other parts go too far, the civil liberties groups say. Students in grades three through twelve are allowed to bring their own electronic devices to school—smartphones, laptops, tablet computers, and eReaders—as long as they’re used for educational instruction purposes and the students use only the school’s Wi-Fi network to access the Internet with the devices. Students in classes below the third grade are not allowed to bring computers, but are provided computers in class and still need to have their parents sign the agreement.

In the case of students who do bring devices to school, the policy allows the school to collect and examine any of the devices at any time for purposes of enforcing the policy, investigating student discipline issues, and “for any other school-related purpose,” a term not clearly defined in the policy. This would essentially force students to submit to “suspicionless searches” of their property.

The policy also gives school officials authority to determine if a student’s off-campus speech is “inappropriate.”

Courts have ruled that a school can conduct a search when there are reasonable grounds to suspect a student has broken the law or the rules of the school and when the search is narrowly tailored and conducted for a compelling purpose, such as deterring drug sales and use on campus. But the Tennessee policy would allow authorities to seize and search a device for no compelling reason. Searches, particularly of smartphones, can contain a lot of private and sensitive information not only about a student but about his or her family, opening students to embarrassment. The policy, however, does not define a “school-related purpose” nor does it specify whether authorities can extract data from the phone or how extracted data can be used.

Under the policy’s rules for using social media, students are not permitted to post any photos of other students or employees of the school district without permission from a teacher. But the policy also gives school officials authority to determine if a student’s off-campus speech is “inappropriate.”

“Personal social media use, including use outside the school day, has the potential to result in disruption in the classroom,” the policy notes. “Students are subject to consequences for inappropriate, unauthorized, and illegal use of social media.”

But this policy amounts to prior restraint of speech by “allowing school officials to censor student speech in and out of school,” the ACLU of Tennessee and EFF note. The groups cite a Third Circuit Court ruling from 2011 that found that a school did not have the authority to punish a student for creating an off-campus MySpace profile of his principal that was considered lewd and offensive.

A section of the policy that pertains to network security provides that the school can monitor all network activity, and that student email accounts “are filtered for content and monitored by authorized personnel.” Furthermore, it says

that a “mobile device management (MDM) client may be installed on their personal device for the purpose of managing the device while on the WCS network.”

“We want the schools to recognize that there are limits on their powers to search or monitor.”

This policy incorrectly assumes that “students have no reasonable expectation of privacy to data and communicates stored on or transmitted” through the school’s network, the civil liberties groups say. They cite a 2006 ruling involving a woman in the Navy, which found she had a reasonable expectation of privacy in emails she sent over a government server even though a banner advised her that she had no expectation of privacy and that her use of the government network was subject to monitoring.

Tom Castelli, legal director for the ACLU of Tennessee, says it’s possible the school district didn’t intend to overreach and just made a mistake.

“We hope this was just a case of they wanted to create a comprehensive policy and what they inadvertently created was something that covers more than maybe they intended,” he said. “That’s our hope that once we bring it to their attention that they’ll work with us to create a policy that fits what they need [while] not infringing on the rights of the students... We want the schools to recognize that there are limits on their powers to search or monitor... so they’re not thinking it’s okay to do these things.”

Castelli went on: “We want to nip an infringement in the bud before it happens.” Reported in: *wired.com*, October 27.

## privacy

### Cambridge, Massachusetts

Privacy has been a prickly topic at Harvard ever since it was revealed last year that the university had searched the email accounts of some junior faculty members, prompting a major self-examination and promises by the administration to do better.

But in November that sore spot was poked again. The university acknowledged that as part of a study on attendance at lectures, it had used hidden cameras to photograph classes without telling the professors or the students.

While students and faculty members said that the secret photography was not as serious as looking through people’s email, it struck many of them as out of bounds—or, at least, a little creepy. And it set off more argument about the limits of privacy expectations.

“I wouldn’t call it spying,” as some people have, said Jerry R. Green, a professor of economics and former university provost. “But I don’t think it’s a good thing.”

Some students called the secret photography a violation of trust, while others shrugged it off because cameras are already ubiquitous, said Sietse Goffard, a junior who is vice president of the Harvard Undergraduate Council. “It’s a question I’m still really conflicted about,” he said.

The episode came as the university is getting familiar with a new honor code that will go into effect next year. That code, Goffard said, “stresses the importance of transparency and community trust.”

Carolyn O’Connor, a first-year student, said she would be concerned if the pictures were made public. But “if it’s for academic reasons, I don’t have a problem with that,” she said.

Researchers at the Harvard Initiative for Learning and Teaching set up the cameras to investigate professors’ complaints that many students skipped lectures, and that attendance dropped as a semester wore on. (The photos confirmed both points.) The researchers were concerned that letting professors or students know could skew the results.

They received clearance from Peter K. Bol, a vice provost, and took still images in the spring in ten classes, which have not been identified, with a total of about 2,000 students. Administrators said that students were not tracked, that professors were not judged on the results, and that after attendance figures had been compiled, the pictures were destroyed.

Dr. Bol has said that he began in August to tell professors that their classes had been photographed. Harry R. Lewis, a computer science professor and former dean of Harvard College, raised the matter at a faculty meeting, and Dr. Bol responded. The exchange was recounted on Dr. Lewis’s blog and reported by student publications.

Dr. Lewis said he was surprised Harvard had not told people they were the subjects of research. “There are lots of things that are O.K. to do if you tell people you’re doing them,” he said.

Dr. Bol said that he had run the project by a review committee, “which concluded that the study did not constitute human subjects research,” and so did not require full committee approval.

The administration has said it will notify students that their pictures might have been taken and will subject future proposals to closer scrutiny. The university’s decade-old policy allows photography “for educational or institutional purposes,” but it does not address secrecy.

The university’s respect for privacy is a touchy subject because of the email affair. While investigating a cheating scandal in 2012, university officials, seeking the source of leaks to the news media, looked at email logs of 16 faculty members. They said they did not read messages.

When word of those searches broke, many professors were furious, arguing that although the university owned the email system, there was an expectation of privacy. In response, the administration adopted a policy on electronic privacy.

The photography has not drawn the same kind of reactions. “This should have been done better,” said Wilfried Schmid, a mathematics professor. “This is not in the same league as the email searches. It’s more like a lack of courtesy.” Reported in: *New York Times*, November 6. □

## success stories



### libraries

#### Kennett, Pennsylvania

The Kennett Consolidated School Board on November 10 voted not to ban Jodi Picoult's best-selling book *Nineteen Minutes* from the Kennett High School library. The book is about a school shooting and goes into graphic detail of a date rape and bullying using explicit language.

The controversy began when a high school parent complained that the content in the book is not suitable for high school students and petitioned for its removal from the high school library. Superintendent Barry Tomasetti tried to resolve the parent's concern internally, but failed.

The vote was 7-1, with board vice president Doug Stirling, a local pastor, dissenting. "The language was gratuitous," Stirling said as his rationale for his vote to ban the book. "If you take every foul word out of that book, it won't change the story one iota. I thought with the filthy language and the graphic depiction of the rape scene that it was not appropriate for minors. Seventy-five percent of our students are minors. That was the reason. Everybody has their own opinion. That's how I felt, and that's the way I voted."

Alli Buley is a Kennett High School honor student who gets good grades and is involved in many school and community activities. She enjoys reading. She read *Nineteen Minutes* after taking it out at the school library. She said the found the book educational, not offensive.

"The book was very well written, and to me, it was how the community came together to deal with the school shooting," she said. "It was about dealing with loss, rebuilding.

I learned a lot from reading it, and I thought the book was really moving."

Board member Rudy Alfonso, a Navy veteran, said: "Banning this book, to me, would almost be like turning my back on all those hundreds of thousands of American veterans, men and women, who died to allow us to keep those freedoms and not to have censorship. I see this attempt to ban this book as if we live in Nazi Germany. This is the United States of America. The Statue of Liberty rings for everyone." Reported in: *Southern Chester County Weeklies*, November 12.

### schools

#### Hanover County, Virginia

The Hanover County School Board on December 9 rejected a resident's request to ban a controversial film about the September 11 attacks from being shown in schools. The vote came after a number of Hanover students and parents spoke out against a requirement that teachers must obtain principals' approval to use certain classroom materials considered to be controversial.

In November, school officials compiled a list of materials they considered controversial and distributed the list to teachers and principals (see page 10). The list was created after complaints arose because Hanover High School students were shown a film about Middle Eastern perspectives on the September 11 attacks titled "Thomas L. Friedman Reporting: Searching for the Roots of 9/11."

At the December meeting, the School Board members voted unanimously against banning the film from the schools.

During the public hearing, Patrick Henry High School student Paul B. Franklin Jr. said that the requirement that principals must approve all materials on the list of controversial materials hinders his ability to explore critical topics in the classroom. He said teachers must teach controversial topics because they are integral to his education.

"I have faith in my teacher, John Bland, to give me the ugly truth," Franklin said.

Rachel Levy, who has three children in Hanover schools, said she is opposed to the list of controversial materials because she wants her children to be exposed to challenging and difficult realities of the world. "I want them to read complex literature, to learn about complexities of humanity and of the world around them, and to learn to solve complex problems and to think critically," Levy said.

Ed Pemberton, a recent graduate of Patrick Henry, said the controversial topics he explored during high school, such as socialist literature, pushed him to think critically. "We'll never be able to solve Islamic radicalism unless we understand their position and philosophies," Pemberton said.

As a part of a review of the controversial materials policies, school staff proposed some language and procedural

changes to the policies. The review was prompted by numerous complaints about the Friedman film over the course of about two months.

Assistant Superintendent Michael Gill said that the administration's proposed changes would update the policy and clarify it, but would do little to change it substantively.

The school administration's proposal includes a requirement for teachers to send notice to parents before using material that could be considered controversial. Teachers need to provide alternative assignments for those who choose to opt out. The proposed policy also states that supplementary materials, which are not purchased by the school, such as teacher-made material, may be reviewed by the principal but do not require approval. The proposal further states that teachers must ensure that the supplementary material is aligned with the curriculum and follows the existing controversial topics policy.

The current policy requires all instructional material to be reviewed by an evaluation committee. Reported in: *Richmond Times-Dispatch*, December 10.

## colleges and universities

### Glendora, California; Hilo, Hawaii

The University of Hawaii and Citrus College, in California, have settled separate free-speech lawsuits brought by students who were assisted by the Foundation for Individual Rights in Education.

The University of Hawaii agreed to pay \$50,000 to two students on the system's Hilo campus who said they had been forbidden to hand out copies of the Constitution outside a designated free-speech zone, according to a statement on the system's website. The system has also changed its free-speech policy in response to the lawsuit.

The Citrus Community College District will pay one student \$110,000, the district said in a statement. Vincenzo Sinapi-Riddle said he wasn't allowed to leave a designated free-speech zone to collect signatures on a petition. Reported in: *Chronicle of Higher Education* online, December 3. □

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*CIA interrogation program . . . from page 1*

for trying to protect the country. But in a later television interview, he reiterated that the techniques "constituted torture in my mind" and were a betrayal of American values.

"What's clear is that the CIA set up something very fast without a lot of forethought to what the ramifications might be," he told Telemundo, adding: "Some of these techniques that were described were not only wrong, but also counterproductive because we know that oftentimes when somebody is being subjected to these kinds of

techniques, that they're willing to say anything in order to alleviate the pain."

Obama's predecessor, President George W. Bush, said repeatedly that the detention and interrogation program was humane and legal. The intelligence gleaned during interrogations, he said, was instrumental both in thwarting terrorism plots and in capturing senior figures of Al Qaeda.

Bush, former Vice President Dick Cheney and a number of former CIA officials have said more recently that the program was essential for ultimately finding Osama Bin Laden, who was killed by members of the Navy SEALs in May 2011 in Abbottabad, Pakistan.

The Intelligence Committee's report tries to refute each of these claims, using the CIA's own internal records to present 20 case studies that bolster its conclusion that the most extreme interrogation methods played no role in disrupting terrorism plots, capturing terrorist leaders, or even finding Bin Laden.

The report said that senior officials—including former CIA directors George J. Tenet, Porter J. Goss and Michael V. Hayden—repeatedly inflated the value of the program in secret briefings both at the White House and on Capitol Hill, and in public speeches.

In a speech in the Senate, moments after the report was released, Feinstein described the tumultuous history of her investigation and called the CIA interrogation program "a stain on our values and our history." She said, "History will judge us by our commitment to a just society governed by law and the willingness to face an ugly truth and say 'never again.'"

As she was preparing to speak, John O. Brennan, the CIA director, issued a response that both acknowledged mistakes and angrily challenged some of the findings of the Senate report as an "incomplete and selective picture of what occurred."

"As an agency, we have learned from these mistakes, which is why my predecessors and I have implemented various remedial measures over the years to address institutional deficiencies," Brennan said. But despite the mistakes, he added, "the record does not support the study's inference that the agency systematically and intentionally misled each of these audiences on the effectiveness of the program."

The report is more than 6,000 pages long, but the committee voted in April to declassify only its 524-page executive summary and a rebuttal by Republican members of the committee. The investigation was conducted by the committee's Democratic majority and their staffs. Many of the CIA's most extreme interrogation methods, including waterboarding, were authorized by Justice Department lawyers during the Bush administration. But the report also found evidence that a number of detainees had been subjected to other, unapproved methods while in CIA custody.

The torture of prisoners at times was so extreme that some CIA personnel tried to put a halt to the techniques,

but were told by senior agency officials to continue the interrogation sessions.

The Senate report quotes a series of August 2002 cables from a CIA facility in Thailand, where the agency's first prisoner was held. Within days of the Justice Department's approval to begin waterboarding the prisoner, Abu Zubaydah, the sessions became so extreme that some CIA officers were "to the point of tears and choking up," and several said they would elect to be transferred out of the facility if the brutal interrogations continued.

During one waterboarding session, Abu Zubaydah became "completely unresponsive with bubbles rising through his open, full mouth." The interrogations lasted for weeks, and some CIA officers began sending messages to the agency's headquarters in Virginia questioning the utility—and the legality—of what they were doing. But such questions were rejected.

"Strongly urge that any speculative language as to the legality of given activities or, more precisely, judgment calls as to their legality vis-à-vis operational guidelines for this activity agreed upon and vetted at the most senior levels of the agency, be refrained from in written traffic (email or cable traffic)," wrote Jose A. Rodriguez Jr., then the head of the CIA's Counterterrorism Center. "Such language is not helpful."

The Senate report found that the detention and interrogation of Zubaydah and dozens of other prisoners were ineffective in giving the government "unique" intelligence information that the CIA or other intelligence agencies could not get from other means.

The report also said that the CIA's leadership for years gave false information about the total number of prisoners held by the CIA, saying there had been 98 prisoners when CIA records showed that 119 men had been held. In late 2008, according to one internal email, a CIA official giving a briefing expressed concern about the discrepancy and was told by Hayden, then the agency's director, "to keep the number at 98" and not to count any additional detainees.

The committee's report concluded that of the 119 detainees, "at least 26 were wrongfully held." It said, "These included an 'intellectually challenged' man whose CIA detention was used solely as leverage to get a family member to provide information, two individuals who were intelligence sources for foreign liaison services and were former CIA sources, and two individuals whom the CIA assessed to be connected to Al Qaeda based solely on information fabricated by a CIA detainee subjected to the CIA's enhanced interrogation techniques."

Many Republicans have said that the report is an attempt to smear both the CIA and the Bush White House, and that the report cherry-picked information to support a claim that the CIA's detention program yielded no valuable information.

However, Sen. John McCain (R-AZ), the only member of the U.S. Senate who personally knows what it means to

be tortured, strongly defended the Democratic-led Senate investigation into the interrogation program, saying the agency's activities "stained our national honor, did much harm, and little practical good."

McCain, who was held captive by the North Vietnamese during the Vietnam War, delivered a careful, passionate denunciation of the actions taken by intelligence officials in the years following the September 11 attacks. The senator declared that Americans have a right to know what was done in their name and in the name of protecting them.

"They must know when the values that define our nation are intentionally disregarded by our security policies, even those policies that are conducted in secret," McCain said in a Senate floor speech. "They must be able to make informed judgments about whether those policies and the personnel who supported them were justified in compromising our values; whether they served a greater good; or whether, as I believe, they stained our national honor, did much harm and little practical good."

Former CIA officials have already begun a vigorous public campaign to dispute the report's findings.

In its response to the Senate report, the CIA said that to accept the committee's conclusions, "there would have had to have been a years long conspiracy among CIA leaders at all levels, supported by a large number of analysts and other line officers."

The battle over the report has been waged behind closed doors for years, and provided the backdrop to the more recent fight over the CIA's penetration of a computer network used by committee staff members working on the investigation. CIA officers came to suspect that the staff members had improperly obtained an internal agency review of the detention program over the course of their investigation, and the officers broke into the network that had been designated for the committee's use.

Most of the detention program's architects have left the CIA, but their legacy endures inside the agency. The chief of the agency's Counterterrorism Center said during a meeting with Brennan in April that more than 200 people working for him had at one point participated in the program.

According to the Senate report, even before the agency captured its first prisoner, CIA lawyers began thinking about how to get approval for interrogation methods that might normally be considered torture. Such methods might gain wider approval, the lawyers figured, if they were shown to save lives.

"A policy decision must be made with regard to U.S. use of torture," CIA lawyers wrote in November 2001, in a previously undisclosed memo titled "Hostile Interrogations: Legal Considerations for CIA Officers." The lawyers argued that "states may be very unwilling to call the U.S. to task for torture when it resulted in saving thousands of lives."

The report describes repeated efforts by the CIA to make that case, even when the facts did not support it. For example, the CIA helped edit a speech by Bush in 2006 to

make it seem as if key intelligence was obtained through the most brutal interrogation tactics, even when CIA records suggested otherwise.

After the CIA transported Abu Zubaydah to Thailand in 2002, two CIA contractors, James E. Mitchell and Bruce Jessen, were in charge of the interrogation sessions, using methods that had been authorized by Justice Department lawyers. The two contractors, both psychologists, are identified in the Senate report under the pseudonyms Grayson Swigert and Hammond Dunbar.

The program expanded, with dozens of detainees taken to secret prisons in Poland, Romania, Lithuania and other countries. In September 2006, Bush ordered all of the detainees in CIA custody to be transferred to the prison at Guantánamo Bay, Cuba, and after that the CIA held a small number of detainees in secret at a different facility for several months at a time, before they were also moved to Guantánamo Bay.

Taken in its entirety, the report is a portrait of a spy agency that was wholly unprepared for its new mission as jailers and interrogators, but that embraced its assignment with vigor. The report chronicles millions of dollars in secret payments between 2002 and 2004 from the CIA to foreign officials, aimed at getting other governments to agree to host secret prisons.

Cables from CIA headquarters to field offices said that overseas officers should put together “wish lists” speculating about what foreign governments might want in exchange for bringing CIA prisoners onto their soil. As one 2003 cable put it, “Think big.” Reported in: *New York Times*, December 10; [huffingtonpost.com](http://huffingtonpost.com), December 10. □

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*the war over net neutrality . . . from page 5*

full-blown Title II regime now, when the classification of cable broadband has always been as an information service, would reverse nearly a decade of precedent, including findings by the Supreme Court that this classification was proper,” Cohen said,

Verizon called it a “radical reversal of course that would in and of itself threaten great harm to an open Internet, competition and innovation.” While Verizon won the lawsuit that caused the D.C. Circuit Court of Appeals to toss the old network neutrality rules, AT&T threatened legal action this time.

“If the FCC puts such rules in place, we would expect to participate in a legal challenge to such action,” AT&T said in statement.

While Obama got support from the usual telecom players, including Markey, Sen. Cory Booker (D-NJ), Sen. Richard Blumenthal (D-CT) and California Democratic Reps. Anna Eshoo and Doris Matsui, House Minority Leader Nancy Pelosi (D-CA) joined the chorus, pushing

for strong net neutrality rules “for the sake of our economy and our democracy.”

“The Internet cannot belong to the wealthy and well-connected; it must be an open space for innovation, entrepreneurship, and communication—a level playing field where success is founded on the best ideas, not the deepest pockets,” she said.

Sen. Elizabeth Warren (D-MA)—who signed a Markey-led letter to the FCC earlier this year pushing for reclassification—applauded Obama’s statement but urged her allies to stay on the offensive.

“This fight is not over yet—lobbyists and lawyers have been lining up to push back against strong net neutrality rules,” she said in a statement, pushing the FCC “to do the right thing and adopt the President’s plan as soon as possible so that a handful of companies cannot block or limit or charge access fees for what we do online.”

Support for Obama’s stance also came from the American Civil Liberties Union (ACLU). Laura W. Murphy, director of the ACLU’s Washington Legislative Office, had this reaction:

“Today, President Obama is a free speech champion. He deserves an enormous amount of credit for unequivocally calling on the FCC to adopt rules that will finally allow the agency to protect the free and open internet. Preventing ‘fast lanes’ and discrimination against some content producers on the Internet is one of the most important free speech issues of the digital age. Large broadband providers should not be allowed to slow or block content from their competitors or because the content may be controversial.”

Writing in the *Washington Post*, however, Larry Downes, a Project Director at the Georgetown Center for Business and Public Policy, raised a number of concerns about the president’s position, which he called “the most radical and legally uncertain approach being considered by the agency—what even many advocates for net neutrality consider to be the ‘nuclear option.’”

“Net neutrality, for those who haven’t been following the story closely,” Downes wrote, “is a term invented by legal academics that calls on Internet Service Providers (ISPs) to treat equally all Internet traffic traveling on the ‘last mile’ to a consumer’s device, without prioritizing the packets of any particular information source, including each ISP’s own content.

“But only those who don’t understand the Internet’s unique architecture take that principle literally.

“The engineering of the Internet has never been ‘neutral,’ nor could it be. Voice and streaming video traffic, for example, which is much more sensitive to delays, is regularly given priority.

“And given increasingly disproportionate traffic from a few leading content providers, including Apple, Netflix and Google, a wide range of non-neutral technologies and practices have emerged over the last two decades to ensure that the most popular content is strategically located and

repeated at key points in ISP networks.

“These include servers co-located at ISP or third party facilities, direct connections to ISP equipment, and Content Delivery Networks, which replicate the most requested content throughout the network to provide shorter paths across the Internet, including the last mile.”

But another *Post* writer, Brian Fung, opined that “Obama’s aggressiveness on net neutrality also offers Wheeler a chance to take sort of a middle ground. There’s some possibility that Wheeler won’t simply do what Obama wants. Wheeler’s response to Obama . . . seemed passive, if not passive-aggressive—he noted that the president’s comment would be treated just like all the other 3.9 million comments that have been submitted to the FCC to date.

“As an independent regulatory agency, we will incorporate the president’s submission into the record of the Open Internet proceeding,” Wheeler said. “We welcome comment on it and how it proposes to use Title II of the Communications Act.”

“Underscoring the FCC’s role as an independent agency downplays Obama’s feedback, signaling that Wheeler might not go along with the president just because he asked.” Reported in: politico.com, November 10; *New York Times*, November 9; aclu.org, November 10; *Washington Post*, November 10, 11. □

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*censorship dateline . . . from page 10*

and acts that would bring into question National Security.”

The Virginia Standards of Learning curriculum requires high school students in U.S. history and world history classes to understand what motivated the attackers on September 11, 2001; the conflicts in the Middle East; and the tension between developing and developed nations.

For example, students are required to understand that economic, social and cultural inequality between developing and developed nations is a source of conflict that motivates terrorist activities.

School Board member John F. Axselle III voiced support for the educational value of the film during an October School Board meeting. “I can see this as a great tool for thought-provoking conversation,” Axselle said. He added that hatred for America exists and that students should understand these global conflicts. “I found the video to tell the truth,” Axselle said. Reported in: *Richmond Times-Dispatch*, November 27.

## university

### Stanford, California

As a satirical, rock n’ roll take on President Andrew Jackson’s controversial life and presidency, past productions

of the musical “Bloody, Bloody Andrew Jackson” have drawn protest. At Stanford University, the protests—and ultimately, cancellation—of the musical came before the cast had even met for their first rehearsal.

And so Stanford students ended up performing a cabaret called “Did We Offend You?” instead of the Andrew Jackson show. “Did We Offend You?” included controversial songs from several musicals including “Rent,” “The Producers,” and the now-canceled “Bloody, Bloody Andrew Jackson.”

“The director had a really clear take on the show and how it would bring history to light in a new way,” said Sammi Cannold, artistic director of At the Fountain Theatricals, the student group that funded the musical. “But members of the Native American community on campus voiced their concerns about some of the issues in the show, and various conversations between ourselves and the community ensued. We determined that the production would isolate certain members of campus and we didn’t want to do that.”

“Bloody, Bloody Andrew Jackson” recasts America’s seventh president as an angst-indie-rock star singing his way through the Battle of New Orleans, the formation of the Democratic Party, and the violent forcing of Native Americans to move West. The musical satirizes and criticizes Jackson’s life and legacy—including the Indian Removal Act, which led to the deaths of thousands of Native Americans—and the dangers of unrestrained populism.

“The concerns from the community were about both the show’s satirical commentary on the issue of Native American genocide and the historical inaccuracies that could be inferred from the story,” Cannold said.

It’s not the first time a production of “Bloody, Bloody Andrew Jackson” has drawn controversy. Native Americans criticized the musical during its initial off-Broadway run in 2010, and again when it was performed in Minneapolis this past summer. Rhiana Yazzie, a playwright who helped organize a protest of the Minneapolis production, said the musical “reinforces stereotypes” and left her feeling “assaulted.”

“The truth is that Andrew Jackson was not a rockstar and his campaign against tribal people—known so briefly in American history textbooks as the ‘Indian Removal Act’—is not a farcical backdrop to some emotive, brooding celebrity,” Yazzie wrote in an open letter. “Can you imagine a show wherein Hitler was portrayed as a justified, sexy rock star?”

Jeffrey Matthews, a performing arts professor at Washington University in St. Louis, said the musical doesn’t glorify Jackson or justify his actions. In an interview, Matthews also made a Hitler comparison.

“By the end of the musical, you’re meant to ask yourself, ‘Was Jackson actually the American Hitler?’” he said. “The message is very much about Jackson claiming much of the country as he could and the horrible things he did. It does require a certain sense of humor to get what the playwrights were after, but it’s meant to show a turning point in our

country and is not an excuse for Andrew Jackson at all.”

Generally, Matthews’s view is the same one critics had of the New York City production: that it portrayed Jackson as a brutal, ignorant oppressor of Native Americans and white America as loving him for his actions. In the musical’s production notes, the writers urge anyone performing the musical to avoid stereotypical and offensive portrayals of Native Americans.

At Washington University, Matthews is currently also directing a production of “Bloody Bloody Andrew Jackson.” He said his version of the musical attempts to make the critique of Jackson clear, juxtaposing scenes of the brutal “trail of tears” with Jackson giving a speech at Harvard University that was meant to establish his legacy. The musical has not been protested at Washington, though Matthews did hear from a Native American student who had concerns about the production after reading about the Stanford performance. “He just wanted to know if we were being respectful of the Native Americans in the piece,” Matthews said. “I responded that in, my opinion, we were.”

For the Stanford American Indian Organization, the concerns went deeper than just whether the Native Americans were portrayed as stereotypes in the musical or if Jackson was portrayed as a hero, said Ashley Harris, the group’s co-chair.

“We were very concerned with how the play represented Native Americans, and less focused on its portrayal of Jackson,” Harris said. “While we realize that satire and art can definitely raise productive questions around Jackson’s legacy, we had a lot of reservations about the satirization of genocide, suicide, and alcoholism, which are topics that still have a very real legacy in many of our communities.”

At the Fountain Theatricals and the “Bloody, Bloody Andrew Jackson” team proposed several ways of ensuring that the musical’s intent was clear and improving representation, including funding a separate musical from a Native American perspective, but an agreement could not be reached. No script changes could change the fact that Native Americans were not part of crafting the musical’s portrayal of Native American issues. In the end, the musical was canceled, though Cannold said the production team is not angry about the decision and that the conversations between the two groups remained respectful.

“We canceled it because we didn’t want to hurt anyone or inspire protests that would have a negative effect on the actors attached to the production,” she said. “I think we were dismayed that another outcome wasn’t possible because that might have led to a more concrete understanding of the issues. It could have been a conversation about Andrew Jackson’s legacy and the terrible things he did. He’s portrayed as a buffoon. But it did give us this other opportunity to explore censorship and controversial art instead.”

“Did We Offend You?” premiered to a sold-out audience.

Peter Bonilla, director of the Individual Rights Defense

Program at the Foundation for Individual Rights in Education, said he was happy to see the students “taking lemons and making lemonade” by creating a cabaret about controversy, but said the cancellation fits a larger trend of students using protest to silence uncomfortable perspectives rather than using protest to make an argument. Those protests are usually about controversial commencement and guest speakers, however, not student productions.

“It’s not all that often that we see works of student-run theater draw this kind of protest,” Bonilla said. “This musical critiques American culture and exceptionalism, and there was an important debate to be had. It’s a conversation that students should be greeting head-on, rather than deciding this musical is just not fit for consumption at Stanford. Because if it’s not fit for consumption at a university like Stanford, then it’s not fit for consumption anywhere.”

But Harris said the conversations that led to the musical’s cancellation and the cabaret’s creation were also valuable to the campus.

“We believe that the collaboration in this experience demonstrates the great maturity and respect that is often present on our campus, but lacking in the real world,” she said. “The producers went out of their way to hear what we were saying, and when they understood our concerns, they made the personal sacrifice to cancel the play, and they found a really unique way to still raise questions on campus about the intersections of art, community, and mutual respect.” Reported in: [insidehighered.com](http://insidehighered.com), November 24. □

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*from the bench . . . from page 14*

## Internet

### San Francisco, California

A U.S. appeals court will reconsider whether Google Inc. must remove from its YouTube video sharing service an anti-Islamic film that sparked protests across the Muslim world.

Earlier this year a three-judge panel on the U.S. Court of Appeals for the Ninth Circuit in San Francisco sided with a woman who appeared in the film and ordered Google to take it down. An 11-judge panel will now rehear the YouTube case, the court said November 12.

The plaintiff, Cindy Lee Garcia, objected to the film after learning it incorporated a clip she had made for a different movie, which had been partially dubbed and in which she appeared to be asking: “Is your Mohammed a child molester?”

Garcia’s attorney Cris Armenta said her legal team will continue to advance Garcia’s copyright interests and “her right to be free from death threats.” In a statement, Google said it is pleased the court agreed to reexamine the case

because it strongly disagreed with the initial decision.

By a 2-1 vote, a Ninth Circuit panel rejected Google's assertion that the removal of the film "Innocence of Muslims" amounted to a prior restraint of speech that violated the U.S. Constitution.

The decision raised questions on whether actors may, in certain circumstances, have an independent copyright on their individual performances. Several organizations, including Twitter, Netflix and the ACLU, filed court papers opposing that idea and urging the court to rehear the case.

The controversial film, billed as a trailer, depicted the Prophet Mohammed as a fool and a sexual deviant. It sparked a torrent of anti-American unrest among Muslims in Egypt, Libya and other countries in 2012. That outbreak coincided with an attack on U.S. diplomatic facilities in Benghazi that killed four Americans, including the U.S. ambassador to Libya. For many Muslims, any depiction of the prophet is considered blasphemous.

In court filings, Google argued that Garcia appeared in the film for five seconds, and that while she might have legal claims against the director, she should not win a copyright lawsuit against Google. The film has now become an important part of public debate, Google argued, and should not be taken down. Reported in: reuters.com, November 12.

### **San Francisco, California**

The regulation of Google's search results has come up from time to time over the past decade, and although the idea has gained some traction in Europe (most recently with "right to be forgotten" laws), courts and regulatory bodies in the US have generally agreed that Google's search results are considered free speech. That consensus was upheld November 13 when a San Francisco Superior Court judge ruled in favor of Google's right to order its search results as it sees fit.

The owner of a website called CoastNews, S. Louis Martin, argued that Google was unfairly putting CoastNews too far down in search results, while Bing and Yahoo were turning up CoastNews in the number one spot. CoastNews claimed that violated antitrust laws. It also took issue with Google's refusal to deliver ads to its website after CoastNews posted photographs of a nudist colony in the Santa Cruz mountains.

Google then filed an anti-SLAPP motion against the plaintiff. Anti-SLAPP regulations in California allow courts to throw out lawsuits at an early stage if they're intended to stifle free speech rights. In this case, the judge agreed that Google was permitted by the First Amendment to organize its search results as it saw fit.

"Defendant has met its burden of showing that the claims asserted against it arise from constitutionally protected activity," the judge's order read.

More powerful companies have also taken issue with Google's ordering of search results to no avail. Back in 2011, a Senate antitrust subcommittee began an investigation of Google's search results under the premise that Google's size could lead to anticompetitive behavior. The FTC also launched an investigation into Google's practices, but the company came away unscathed after the 19-month-long ordeal.

In 2012, Google commissioned a white paper by prominent UCLA law professor Eugene Volokh and attorney Donald Falk in which the two concluded that Google's search engine is protected by the First Amendment because it "uses sophisticated computerized algorithms, but those algorithms themselves inherently incorporate the search engine company engineers' judgments about what material users are likely to find responsive to these queries."

Volokh said that if anything, the search engine's status as protected by the First Amendment is stronger after the latest ruling than it was before. This is especially true given a recent ruling in a case involving Chinese search engine Baidu, which was sued in America by pro-democracy activists for censoring political speech from US users. Nevertheless, the Manhattan U.S. District Court judge in that case ruled that the search engine could organize its search results as it liked because it was protected by the First Amendment.

"Newspapers, guidebooks have a First Amendment right to choose which stories are worth publishing, and which businesses are worth covering," Volokh said. "Likewise, Google (a modern heir of the guidebook) can choose which pages to prominently display (and thus implicitly recommend as relevant and interesting) to readers and which pages aren't worth displaying so prominently—or aren't worth displaying at all." Reported in: arstechnica.com, November 17.

## **telecommunications**

### **Charlotte, North Carolina**

A judge unsealed a trove of court documents November 21 that could shed light on a secret cellphone tracking program used by police nationwide. The judge in Charlotte acted after a petition from the *Charlotte Observer* to make the documents public. Included are 529 requests from local Charlotte-Mecklenburg police asking judges to approve the use of a technology known as StingRay, which allows cellphone surveillance.

Together, the requests give the most complete account yet of the U.S. law enforcement tactic, about which little is known.

The records date back to 2010, meaning police made requests roughly twice a week. There were no records before 2010. The police requests are "rarely, if ever"

denied, the *Observer* reported, and judges at times appeared to not know exactly what they were authorizing.

As a result, the Mecklenburg County District Attorney's Office, which had not previously seen the documents, will review each case in which the technology was used.

Such police requests are rarely made public for fear of disclosing confidential investigative techniques. Privacy advocates argue transparency is needed to ensure police are following the law.

According to the *Observer*, StingRay works by imitating a cell tower. From there, the police can collect the serial number, geolocation and other data from any phone, laptop or device that connects to the tower. Records revealed police had used StingRay to track criminals suspected of crimes ranging from murder to rape to felony possession of stolen goods.

The police department has defended the technique, arguing it is used judiciously for serious crimes and with a respect for constitutional rights.

The release could have national implications. Civil liberties groups, lawmakers and law enforcement officials are locked in a battle over how—and where—government investigators should file warrants for digital surveillance. The FBI has been seeking the authority to remotely search or track electronic devices even if they don't know the location of the device. Privacy advocates have vocally resisted the attempt.

Privacy groups are also pressuring Congress to bring transparency to the court that approves the National Security Agency's digital surveillance requests. Reported in: *The Hill*, November 21.

## copyright

### New York, New York

A federal judge in New York has ruled against Sirius XM over an obscure copyright issue that has galvanized the music industry: royalties for recordings made before 1972.

Sirius XM and Pandora Media have both been hit in the last year by a series of lawsuits over old recordings. Neither company pays record labels or performing artists on songs recorded before 1972, when federal copyright protection was first applied to recordings. (Both services, however, pay separate royalties for songwriting.)

Last year, members of the 1960s band the Turtles—who sang hits like “Happy Together” and “She'd Rather Be With Me”—sued Sirius XM in California, New York and Florida, saying that by playing its songs without permission, the broadcaster had infringed on the group's rights under state laws.

The Turtles sought class-action status and asked for \$100 million in damages. But these cases may well have broader implications if they lead to changes in copyright law.

On November 14, Judge Colleen McMahon of United States District Court in Manhattan rejected Sirius XM's motion for summary judgment, saying the Turtles have performing rights to their recordings under New York State law. Sirius XM has until December 5 to dispute remaining facts in the case, the judge wrote, otherwise Sirius XM will be ruled liable for infringement.

“In short, general principles of common law copyright dictate that public performance rights in pre-1972 sound recordings do exist,” Judge McMahon wrote.

The ruling came after a separate win for the Turtles in September, when a federal judge in California found Sirius XM liable for infringement under state laws there. That decision was viewed as a major victory for artists and record companies, although its wider impact was unclear because it applied only to California.

Judge McMahon's decision bolstered the music industry's position that old recordings are covered under state laws. But both recording and broadcasting executives say the potential for wide confusion over music licensing—for example, it may mean that thousands of AM-FM radio stations, as well as restaurants or sports arenas where music is performed, may have been infringing on recording rights for decades—may require clarification from Congress.

The cases also come as record sales have continued to decline and the music industry has become more reliant on income from online and streaming audio services. SoundExchange, a nonprofit organization that collects recording royalties from Internet and satellite radio, estimates that about \$60 million is lost each year in uncollected royalties from oldies. Reported in: *New York Times*, November 16.

## prior restraint

### New Britain, Connecticut

In a November 24 ruling from the bench, New Britain Superior Court Judge Stephen Frazzini enjoined the *Connecticut Law Tribune* from publishing an article based on a court document that had previously been published on the Judicial Branch website.

Daniel J. Klau, the newspaper's lawyer, said he has already filed an appeal. He and other media law attorneys say this appears to be an extraordinarily rare case of prior restraint on free expression guaranteed by the First Amendment. They say that normally pre-publication court orders have been deemed constitutional only in matters of extreme threats to public safety, on the level of national security.

Frazzini's oral ruling is currently sealed, but Klau said he is working to have it unsealed. “I am actually under a restraining order about what I can tell my own client. There are some things that I can share,” said Klau, of

the Hartford office of McElroy, Deutsch, Mulvaney & Carpenter. “What the *Law Tribune* can say,” he said, “is that in a child protection case on the juvenile court docket, the court granted a party’s request for an injunction barring the *Connecticut Law Tribune* from publishing information that it lawfully obtained about the case.”

The action before Frazzini was in juvenile court session, where judges have the discretion to limit proceedings to those participants deemed necessary. A writer representing the *Law Tribune* was not permitted to remain in the courtroom to witness the proceedings, after his presence was objected to by a lawyer for one of the parents in an underlying custody case and by a guardian ad litem.

Klau said he was not sure he could talk specifically about who the lawyers were in the case, or even the judge.

The lawyer for the mother in the custody case is Stephen Dembo, of West Hartford, who took the unusual step of requesting the injunction to prevent the newspaper’s publication of a story about the court filing. The guardian ad litem (GAL) is Susan Cousineau, a prominent voice in the ranks of guardians ad litem, who also cochaired a legislative task force on GAL reform in the last legislative session.

The Department of Children and Families legal director, Barbara J. Claire, wanted to make it clear that her agency was not behind the request for the publication ban, and said in a statement: “The department did not request that a court grant a motion to prevent media coverage in a confidential child protection case.”

The motion to bar publication was filed November 17. The *Law Tribune* immediately filed an objection to the motion, arguing that any prior restraint on publication is unconstitutional. “Prior restraints on speech and publication are the most serious and the least tolerable infringements on First Amendment rights,” the brief states, quoting the 1976 U.S. Supreme Court case of *Nebraska Press Association v. Stuart*.

In fact, the Connecticut Constitution provides greater protection of speech than the U.S. Constitution. In case law, the brief states, the state Supreme Court has ruled that juvenile court confidentiality does not trump First Amendment rights.

The petition cites the 1985 case of *In re Juvenile Appeal*, which concludes that juvenile confidentiality statutes “do not completely prevent or abolish publicity in juvenile cases, but by restricting accessibility to juvenile records and proceedings may reduce the amount of publicity generated.”

That case quotes from the landmark 1931 prior restraint case of *Near v. Minnesota*, in which the U.S. Supreme Court ruled a state statute outlawing scandal sheets’ yellow journalism was unconstitutional.

William Fish, of the Hartford office of Hinckley, Allen & Snyder, has frequently represented *The Hartford Courant* in media law cases. “This sounds like a true case of prior restraint,” he said. “It’s outrageous. It sounds like an

overreach—a clear breach of what a judge is allowed to do...

“Prior restraint of the press is only constitutional in very rare situations,” said Fish. “You basically have to have a situation where someone is going to publish in advance the plans for the D-Day invasion.”

James H. Smith, president of the Connecticut Council on Freedom of Information, called prior restraint issues “settled case law. You can’t prevent the press from printing news. Even in Juvenile Court. It’s a matter of covering how the American system of justice is being handled.”

He added, “Prior restraint was settled with the *New York Times*’ Pentagon Papers case” in 1971. “The U.S. Supreme Court says that you can’t stop the press from publishing a story unless it’s Armageddon.”

Smith, a veteran Connecticut writer and editor, said the press is typically respectful of the privacy interests of children, but is keenly interested in “how the system is serving all those involved. No judge should try to shut down reporting on how the court system works.” Reported in: *Connecticut Law Tribune*, November 25.

## revenge porn

### Phoenix, Arizona

A federal judge put a new Arizona law against “revenge porn” on hold November 26 after civil rights groups sued over constitutional grounds.

The order from U.S. District Judge Susan Bolton came as part of an agreement between the Arizona attorney general’s office and the groups that sued. The order blocks enforcement of the law to allow the legislature time to work on changes.

Rep. J.D. Mesnard (R-Chandler), crafted the bill to bar “revenge porn” from being posted online by jilted lovers. The American Civil Liberties Union sued in September, saying the law is so broadly written it makes anyone distributing or displaying a nude image without explicit permission guilty of a felony. The group said that violates the First Amendment.

The suit was filed in U.S. District Court in Phoenix on behalf of several bookstores and publishing associations, the owner of the *Village Voice* and 12 other alternative newsweeklies nationwide, and the National Press Photographers Association.

Gov. Jan Brewer signed House Bill 2515 into law in April after it unanimously passed the Senate and House. Mesnard said he’ll work on changes but isn’t sure they’ll satisfy the ACLU.

“Given my willingness to do that, it made sense to say, well let’s see if we can get an agreement to hold off on the bill for now and make some changes in the next session,” Mesnard said. “We may end up right back where we are now because some of the issues the ACLU brought up, I don’t think they’ll ever be satisfied.”

David Horowitz, executive director of the Media Coalition, whose members include publishers, librarians and booksellers, said the current law would have a chilling effect on free speech. “The range of material that this law could bring in was hugely overbroad, it went far beyond anything you would think of as sort of malicious invasion of privacy.” Horowitz said.

The court order put the ACLU’s request for a preliminary injunction on hold until the legislature passes and the governor signs a new version of the bill, or until the legislature adjourns in late spring. If no new version is passed, Horowitz said the groups objecting to the law will move to get it blocked permanently. Reported in: Associated Press, November 26. □

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