

newsletter on intellectual freedom



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

ISSN 1945-4546

November 2015 □ Vol. LXIV □ No. 6 □ www.ala.org/nif

the Newsletter is changing!!

After more than a half century of publication this issue of the *Newsletter on Intellectual Freedom* will be the last. But not to fear! Beginning in the Spring of 2016 the ALA Office for Intellectual Freedom will begin publication of a new quarterly journal of intellectual freedom entitled *In Libris Libertas*.

The new publication will incorporate many of the features of the *Newsletter*. Readers will still read in each issue about the latest incidents of book banning in “censorship dateline,” the latest court rulings in “from the bench,” legal controversies in “is it legal?” and, of course, “success stories.” New ALA intellectual freedom policies and reports to the ALA Council from the Intellectual Freedom Committee and the Freedom to Read Foundation will also continue to appear.

But the new journal will add serious refereed essays on intellectual freedom, book reviews, legal briefs and other articles, as well as detailed personal accounts from participants in intellectual freedom cases. All this in an attractive new electronic format.

Watch for the first issue of *In Libris Libertas* in Spring 2016. Then look forward to a new issue every three months thereafter. □

Note from the Publisher: Thank you, Hank Reichman, for all your work over these many years, on a publication so many depend on. And thank you for staying on to work on the new journal.

I will work with Hank, Deborah Caldwell-Stone, and the Editorial Board on Vol. 1, No. 1. The Board is Rosanne Cordell, Martin Garnar, Mack Freeman, Clem Guthro, and Mike Wright. I retire on Dec. 31, 2015, but will make sure this newsletter has a smooth transition!

in this issue

the Newsletter is changing!! 137

library groups continue fight for net neutrality 139

censorship dateline: schools, internet, foreign 140

from the bench: U.S. Supreme Court, schools, student press, university, privacy, national security, harassment, copyright, periodicals, etc. 147

is it legal?: schools, student press, university, intellectual property, privacy 158

success stories: schools 163

targets of the censor

books

Across the Universe 163

Art History: Eighteenth to Twenty First Century 164

Beloved 163

Cal 142

City of Thieves 144

The Curious Incident of the Dog in the Night-Time 140

Delta Force 163

Death and the Maiden 142

The Disappearing Spoon 140

Extremely Loud and Incredibly Close 141

The Glass Castle 143

The Immortal Life of Henrietta Lacks 143

Into the River [New Zealand] 146

Looking for Alaska 163

The Princess Diaries 163

The Things They Carried 145

World Cultures 141

periodicals

The Calumet [Muscatine Community College] 151

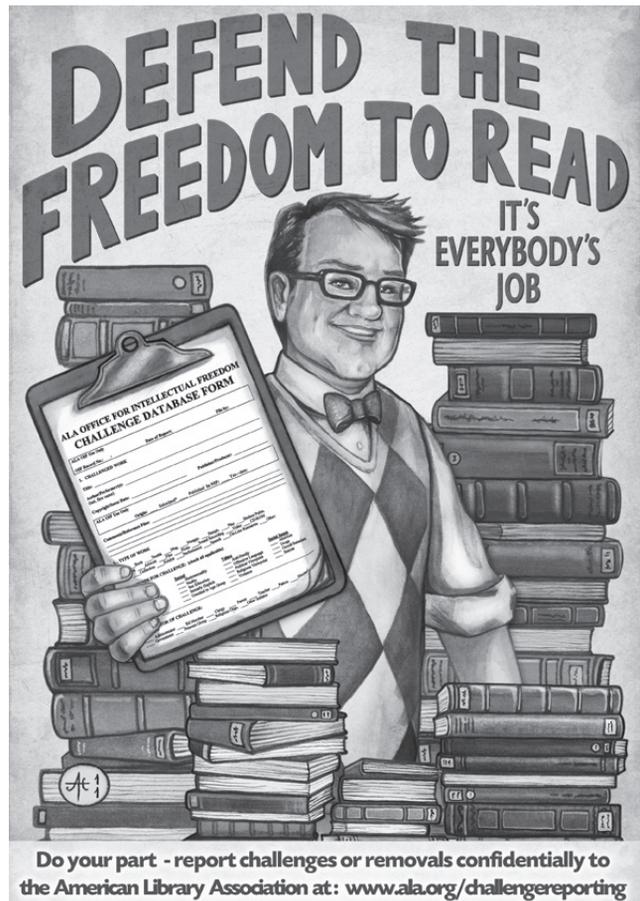
Lexington Herald-Leader 156

The Matador [Alhambra Unified S.D.] 159

The Stinger [Pemberton Township H.S.] 160

search engines

Google [France] 145



Views of contributors to the *Newsletter on Intellectual Freedom* are not necessarily those of the editors, the Intellectual Freedom Committee, nor the American Library Association.

(ISSN 1945-4546)

Newsletter on Intellectual Freedom is published bimonthly (Jan., Mar., May, July, Sept., Nov.) by the American Library Association, 50 E. Huron St., Chicago, IL 60611. The newsletter is also available online at www.ala.org/nif. Subscriptions: \$50 per year. For multiple subscriptions to the same address, and for back issues, please contact the Office for Intellectual Freedom at 800-545-2433, ext. 4223 or oif@ala.org. Editorial mail should be addressed to the Office of Intellectual Freedom, 50 E. Huron St., Chicago, Illinois 60611.

library groups continue fight for net neutrality

Library groups are again stepping to the front lines in the battle to preserve an open internet. The American Library Association (ALA), Association of College and Research Libraries (ACRL), Association for Research Libraries (ARL) and the Chief Officers of State Library Agencies (COSLA) have requested the right to file an *amici curiae* brief supporting the respondent in the case of *United States Telecom Association (USTA) v. Federal Communications Commission (FCC) and United States of America*. The brief would be filed in the U.S. Court of Appeals for the District of Columbia Circuit—which also has decided two previous network neutrality legal challenges. ALA also is opposing efforts by Congressional appropriators to defund FCC rules.

The *amici* request builds on library and higher education advocacy throughout the last year supporting the development of strong, enforceable open internet rules by the FCC. Library groups decided to pursue their own separate legal brief to best support and buttress the FCC's strong protections, complement the filings of other network neutrality advocates, and maintain the visibility for the specific concerns of the library community. Each of the *amici* parties will have quite limited space to make its arguments (likely 4,000–4,500 words), so particular library concerns (rather than broad shared concerns related to free expression, for instance) are unlikely to be addressed by other filers, and demand a separate voice.

The FCC also adopted in its Order a standard that library and higher education groups specifically and particularly brought forward—a standard for future conduct that reflects the dynamic nature of the internet and internet innovation to extend protections against questionable practices on a case-by-case basis.

Based on conversations with FCC general counsel and lawyers with aligned advocates, the group's focus is on supporting the future conduct standard (formally referenced starting on paragraph 133 in the Order as “no unreasonable interference or unreasonable disadvantage standard for internet conduct”) and why it is important to the library community. They also re-emphasize the negative impact

of paid prioritization for libraries and their users if the bright-line rules adopted by the FCC are not sustained, and ultimately make arguments through the lens of the library mission and promoting research and learning activities.

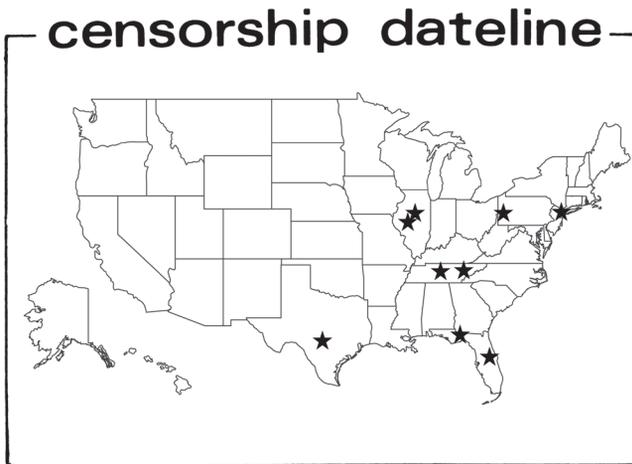
The library group motion states that FCC rules are “necessary to protect the mission and values of libraries and their patrons, particularly with respect to the rules prohibiting paid prioritization.” Also, the FCC's general conduct standard is “an important tool in ensuring the open character of the internet is preserved, allowing the internet to continue to operate as a democratic platform for research, learning and the sharing of information.”

USTA and *amici* opposed to FCC rules filed their briefs July 30, and the FCC filing was due September 16. Briefs supporting the FCC had to be filed by September 21.

ALA also is working to oppose Republican moves to insert defunding language in appropriations bills that could effectively block the FCC from implementing its net neutrality order. Under language included in both the House and Senate versions of the Financial Services and General Government Appropriations Bill, the FCC would be prohibited from spending any funds towards implementing or enforcing its net neutrality rules during FY2016 until specified legal cases and appeals are resolved. ALA staff and counsel have been meeting with Congressional leaders to oppose these measures.

The Obama Administration criticized the defunding move in a letter from Office of Management and Budget (OMB) Director Shaun Donovan stating, “The inclusion of these provisions threatens to undermine an orderly appropriations process.” While not explicitly threatening a presidential veto, the letter raises concern with appropriators attempts at “delaying or preventing implementation of the FCC's net neutrality order, which creates a level playing field for innovation and provides important consumer protections on broadband service . . .”

Neither the House or Senate versions of the funding measure has received floor consideration. The appropriations process faces a bumpy road in the coming weeks as House and Senate leaders seek to iron out differing funding approaches and thorny policy issues. Reported in: *District Dispatch*, September 2. □



schools

Orlando, Florida

An Orange County mother reached out to news media about a book she said her 12-year-old daughter should not be reading in school. *The Disappearing Spoon* is a nonfiction reference book to introduce the periodic table and was assigned to eighth-graders at Discovery Middle School as required summer reading.

“From a 12-year-old reading perspective, I think there are parts of this book that are dark, and (the book has) some content that’s rather questionable for a 12- and 13-year-old reader,” Alison Trahe said. She said there’s questionable content throughout the book, including in chapter one when the author relates noble gases to Plato’s writing on love and the erotic.

“As an adult, I can understand how some of those reactions can be correlated together, but I had quite a bit of trouble trying to understand how my 12-year-old was supposed to bring those connections together,” Trahe said.

Later in the book, potassium is compared to a cocaine-like rush and coitus is compared to rhodium—two things Trahe doesn’t want her daughter Googling, like the school suggested. “When you Google search coitus, it’s not necessarily age appropriate for a 12- and 13-year-old to bring up,” Trahe said.

Discovery Middle School officials told Trahe that eighth-grade physical science teachers felt like the book did the best job of getting students ready for the upcoming school year.

“I can understand this assignment maybe being extra credit, but making this a requirement for our entire eighth

grade seems like a stretch and doesn’t seem to match any of OCPS standards,” Trahe said.

When Trahe took her concerns to Orange County Public Schools, she said she was met with the excuse of rigor. “I know that there are a lot of pressures on our schools to produce very high-performing students, but content can’t be hidden by a veil of rigor,” Trahe said.

Trahe said she searched every school that uses the book for summer reading and only found a few in the nation—all were high school Advanced Placement chemistry. Reported in: clickorlando.com, September 26.

Tallahassee, Florida

National free speech and literary advocates petitioned Lincoln High School this past summer to restore a reading assignment that was controversially dropped after parents objected to the book’s content and language.

“The decision,” the letter to Principal Allen Burch read, “violates school policy on challenged materials and also raises serious First Amendment and due process concerns.” School Board members and district staff stood by Burch’s decision and will not be reinstating the assignment.

“This is a teachable moment for our school district and we will learn a lot from it,” said School Board Vice Chair Dee Dee Rasmussen. “But taking an assignment from required to optional is a far cry from book banning or censorship.”

A few days after receiving about a dozen complaints through telephone calls and emails about the profanity and atheism expressed in *The Curious Incident of the Dog in the Night-Time*, a 2003 award-winning novel by Mark Haddon, Burch dropped the assignment.

A parent’s objection also reached School Board member Alva Striplin, who initially reported that she was going to recommend taking the book off the district approval list. Striplin—who later acknowledged that *Curious Incident* is “beautifully written with a powerful message”—clarified that she is not seeking a ban and wants it to stay on the shelves. Striplin does, however, want to prevent the book from being assigned as a requirement again. This does not equate to censorship, she claimed.

“Parents’ concerns come first. That is what we do best—listen to parents’ concerns and adjust as needed,” she said. “It is solely the language of the book that is the problem.”

Curious Incident is narrated by a 15-year-old with a cognitive disability who is around adults who tend to swear. The f-word is written 28 times and there are a handful of other curses throughout the text. A few characters question the existence of God, which also had raised some parents’ eyebrows.

According to district bylaws, removing any instructional material, including library books, must go through a prescriptive review process overseen by a committee composed of two teachers, an administrator and two people

who are members of the Parent Teacher Organization or District Advisory Council or are active district volunteers. District policies also safeguard the importance of “scholarly inquiry” on controversial issues.

District officials say that these policies do not pertain to summer assignments—even those that are due after the school year begins and will be discussed in class—because they are not a part of the curriculum.

The groups that signed the letter—the National Coalition Against Censorship, American Library Association, Comic Book Legal Defense Fund, National Council of Teachers of English, PEN American Center, Association of American Publishers and American Booksellers for Free Expression—disagree, and contend that the decision was a violation.

The debate also brought attention to other overlooked policies regarding instructional materials. Rasmussen asked why parental warnings were not attached to the original assignment. According to administrative procedures, parents must receive advance notice about mature content included in any assignment, as well as justification for selecting that material. Lincoln teachers did not issue either.

“Hindsight is 20/20,” Rasmussen said. “I don’t expect anyone to have encyclopedic knowledge of every bylaw or policy. This is where we may have fallen from meeting the full intention of the policy in the first place,” she added. “But now the issue has raised awareness. This conversation will result in further conversations with staff that ensure we proceed according to policy.” Reported in: *Tallahassee Democrat*, August 13.

Mattoon, Illinois

High School leaders have removed a book from the Mattoon High School curriculum for its use of lewd and possibly offensive materials.

Michele Sinclair, MHS principal, said *Extremely Loud and Incredibly Close*, by Jonathan Safran Foer, was removed from an English class because the book contains several passages that were “extremely” vulgar detailing sexual acts.

She said parents brought up concerns as to the content in the book.

“The problem wasn’t necessarily the book or the material,” Sinclair said. “The problem was that we did not provide parents with an opportunity to opt out.” Sinclair said school officials should have given the parents the ability to say they were not comfortable with their child reading that material, as is done when R-rated movies are shown in the classroom.

“Once it was brought to our attention, then because we didn’t provide parents with that option, we didn’t really feel like we had a lot of alternatives at this point,” Sinclair said.

Sinclair said school leaders are addressing the process, working with the English department, on creating a document with the summary, connection to the curriculum and notes about the text of books.

“We want full disclosure to parents about what their students are reading,” she said.

“The bottom line is these are still kids. Yes, they are young adults, but they are on the cusp of adulthood,” Sinclair said. “Parents should have the right to determine what their students are exposed to in the classrooms.”

Sinclair said deciding which books would be the best to engage the students is challenging. “When students get to certain level where their reading level is so high and we want to provide them with the novels that are appropriate with their reading levels, it is difficult to totally avoid adult issues,” Sinclair said.

Books are added to the curriculum by first being recommended by the English teachers, who brainstorm high engagement books they would like the students to read. Those books are then approved through the Curriculum Coordinating Committee and Mattoon board of education.

Sinclair said she did not know if *Extremely Loud and Incredibly Close* will be used in the curriculum again, even under the new procedure. Reported in: *Journal-Gazette and Times-Courier*, September 23.

Swansea, Illinois

Rachel Seger’s daughter “adores” her history teacher and “loves” the class at High Mount School in Swansea, but Seger didn’t like the 12-year-old’s homework of vocabulary words one night.

“She said, ‘What’s Koran mean?’ and I flipped,” Seger said. “I said, ‘Excuse me?’ and I looked at them, and I said oh my God.” The vocabulary words included jihad, Islam, Muslim, Arabia, Muhammad, Allah, hegira, mosque, Koran and Baghdad.

“Some of these words, I don’t even know what they are: Ayatollah, caliph,” said Seger, who was shocked that the history class would step so close to teaching religion. “I don’t want her learning other faiths from school. If it would have just stopped at ‘this is their culture, this is where they go to church,’ fine. But when you get into the actual aspect of it, that’s where I’m drawing the line. That’s just going a little too far.”

Jim Munden, a sixth-grade history teacher at High Mount, would not comment other than to say the issue had been resolved with the family. Seger said she is happy with the quick resolution, and her daughter will work on the geography portions, not the definitions.

Mark Halwachs, superintendent of High Mount School, said parents rarely question specific parts of lessons. In his four years at the post, he said, one parent questioned a library book, but those concerns were allayed after Halwachs read the book and discussed it with other educators.

Halwachs says the school is teaching—and students that age can tell—the difference between a large group and a fanatical faction. “We have to present, with 9/11 or anything, it wasn’t a religion that did that. It was bad men that did that.

I think you have to take moments like that and use them as teachable moments,” he said. “You have to look at the age group and your students, and to me you can talk about different things in the world and teach about tolerance.”

Seger says her daughter is too young for some discussions. “It’s just hard to explain this to her. That age group, 12-year-old girls, they’re a lot more sensitive than people give them credit for,” Seger said.

“When it comes to that, some of those terms should have been left off of there, or left to parents, or wait until they’re older. Wait until 16 or 17 and old enough to wrap her head around it. If they’re going to teach it, they’re going to teach all of it, not just the happy, good side of it . . . and she’s not prepared to hear the whole truth.”

Halwachs said the class, which studies from the board-approved *World Cultures* text published by Silver, Burdett and Ginn, also studies India and the Hindus, Europe and Catholicism, England and Anglicans. Seger’s daughter said they had studied monarchies and Egyptian gods and goddesses.

“You can teach about religion, you just can’t . . . endorse or support a religion over another,” Halwachs said. “You can’t say (Jesus) is the one and only, or he’s the best; you can explain about and teach about the religions of the world.”

Seger said: “I just don’t think that it should be the teacher’s job to be telling my child that.”

Halwachs said parents and teachers “pretty regularly” work out concerns about what students are taught. “It’s important to talk to students and go into deep conversations about cultures and beliefs . . . to me (history) is a perfect time to do this,” Halwachs said. Reported in: *Belleville News-Democrat*, October 16.

Rumson, New Jersey

How many obscenities should a senior be given to read for English class in public school? Is reading about “dusting off a diaphragm” too much for juniors? Or are explicit passages simply small parts of complex literary works that help expand how students in one of the state’s elite school districts think critically?

Those are questions debated in the Rumson-Fair Haven Regional School District, where there are competing petitions over the required reading lists for students. Some say the passages are too sexually explicit for high school teens. Others say striking these books from required-reading lists is censorship.

At the center of the discussion is the 1983 novel *Cal*, by Bernard MacLaverty, described as “a love story as affecting and tragic as you could want,” and the Ariel Dorfman play *Death and the Maiden*, recipient of the Laurence Olivier Award for Best New Play in 1992.

Individuals on all sides of the issue say there’s a broader debate about what types of books high school students

should read. In this case, both writings are steeped in explicit descriptions of sexual thoughts and conduct.

“I see it as a discussion that hopefully will become a scholarly discussion on do these books have merit and what is the merit,” said Rumson-Fair Haven Superintendent Pete Righi. “I am not entering the debate at this point because I feel the discussion is very healthy.”

Death and the Maiden has been required reading for all seniors for several years, Righi said. *Cal* has been on and off the required reading list for juniors over recent years, he said. It is not immediately clear why complaints are only surfacing now, though some parents said it wasn’t until a petition drive objecting to the works that they were made aware of what their teens were reading.

About 250 people signed an online petition asking that both books be removed from required-reading lists and replaced with more “age-appropriate texts.” Petition organizers, however, later shut down the petition and said they would bring their concerns to a school board meeting.

Objecting parents said that they don’t want to ban the books; keeping them in the libraries is fine. What they don’t want is for them to be on the required-reading lists—a nuance some say takes their protest out from under the rubric of book banning.

“My feeling is once something is that graphic, is there not another book? *Cal* is not *Hamlet*. There are other books about oppression,” said Siobhan Fallon Hogan, the mother who discovered the passages while reading the books along with her son, now a senior, and brought the issue to the attention of other parents. “There comes a time when it’s time to make a better choice.”

Others in the community have circulated a competing petition. They say removing required reading still amounts to censorship. “If that’s not a ban, I don’t know what is,” said Norm Dannen, a 2005 Rumson-Fair Haven Regional High School graduate who started the competing petition after reading about the first one on Facebook. His petition is still active and had about 760 signatures. A number of the signers do not live in the area, but Dannen said the signers do have a connection to Rumson-Fair Haven either as alumni or residents in the area.

Dannen said he doesn’t recall reading either book when he was in school. But the literature lessons he had while at Rumson-Fair Haven helped shape how he and other students form their opinions now, he said.

“If you don’t take the time to wrestle with these ideas, how are you going to challenge the world?” he said. “You need challenging ideas. You need to be challenged. At what point does that start? High school? College? When?”

Language is among the points considered when a team of teachers from the district’s English department selects books for the literature curriculum, Righi said. It’s balanced against books’ literary merit, artistic value, timeliness and universal themes, he said. Teachers also consider what books might be appropriate for which grades, Righi said.

“These books are not taught to freshmen and sophomores for a reason,” he said. “Those things are all looked at.”

Rumson-Fair Haven is ranked among the top schools in New Jersey. Upwards of 97 percent to 98 percent of its students move on to two or four-year colleges, and most have taken at least one Advanced Placement course, Righi said.

But Hogan said parents shouldn't be brought into discussion about book assignments by chance. Hogan said she reads books her children are assigned in school so she can discuss the literary themes with them. Her idea was to reinforce at home the discussions they would already be having in schools.

A freshman reading assignment that contained the f-word raised her eyebrows, making her wonder if the school knew it was in the book. But she didn't approach school officials until she saw another a book the following school year: *Honky*, by Dalton Conley, published in 2001, a memoir about Conley's childhood growing up as one of the few white children in a predominately black and Puerto Rican neighborhood.

It includes a passage in which a character devises a plot to determine if her husband was having an affair by weighing his genitals with her Weight Watchers scale.

After reading *Cal* last spring, then seeing *Death and the Maiden* on the summer reading list, Hogan decided to reach out to other parents.

First published in 1983, *Cal* is about a young Irish Catholic man involved in the Irish Republican Army who falls in love with the wife of a man murdered in an incident in which Cal was a getaway driver. It has been described as “a marvel of technical perfection. . . . a most moving novel whose emotional impact is grounded in a complete avoidance of sentimentality.”

The final chapter describes intercourse between Cal and the widow in explicit detail. During the affair, Cal questions what would happen if the widow, Marcella, became pregnant. She assuaged him by saying she had “dusted off her diaphragm.”

Death and the Maiden is about Paulina, a former political prisoner who was raped by her captors. Years later, Paulina believes she has found her attacker—a man who drove her husband home after a flat tire. Paulina ties up her attacker and puts him on trial, with her husband acting as his attorney.

The play had its world premiere in 1991 at the Royal Court Theatre in London. It ran on Broadway for five months in 1992.

“It was a fabulously powerful Broadway show,” Hogan said. “But it's not age-appropriate.” At the very least, the school should let parents know what kind of language will be in the books students are reading, Hogan said, noting she would not have known the language was in the book if she had not been reading her children's assignments with them. Reported in: *Asbury Park Press*, October 8.

Ambridge, Pennsylvania

Myron and Keyona Walker were upset to learn their daughter was assigned to read a book they describe as racist and sexually explicit. Myron Walker stood before the school board in September and read an excerpt riddled with racial slurs from *The Glass Castle*, by Jeannette Walls, after telling board members, “I hope you find this offensive.”

Walker said Ambridge High School students in the ninth grade honors communications class were also required to read the book out loud and had to answer questions from assigned pages. “I want you to know what my daughter has to go through in class,” said Walker.

Keyona Walker said even after she addressed the offensive material with school officials, her daughter came home with more school work and was told to continue to read the book. She told the board the book, a 2005 memoir, should be removed from the course.

The autobiographical memoir that brings attention to issues of poverty and family dysfunction, was banned from a high school in Dallas, Texas, after several complaints from parents. A high school in Michigan also banned the book after parents complained of “explicit language and references to child molestation, adolescent sexual exploits, and violence.”

“There is no reason we should have these words in their studies,” Keyona Walker said.

School Board President M.C. Knafelc, a retired teacher, said she was only made aware of the issue at the last minute and was trying to ascertain if the book was on an approved reading list and how it got in the curriculum.

“I don't know if things are said in the book to show how ignorant the people are . . . I will definitely look into this,” she said. Neither the teacher nor the principal was present.

Mark Kuritzky said he isn't in the habit of book burning, but suggested the board call the teacher that night to suspend those lessons until the administration had time to investigate the purpose of the book. “It's never been right, and it's certainly not right in these times today,” Kuritzky said.

School Director Rob Keber motioned to suspend the use of the book, which director Kim Locher seconded, until an investigation could be conducted. None of the board members were opposed. The board directed administrators to take action on an investigation. Superintendent Cynthia Zurchin was not present at the meeting. Barry King, director of special programs, agreed to call the teacher. “I think that's the best thing that can be done,” Keber said.

Solicitor Christian Bareford said the board has the ability to request that students not proceed with this particular assignment until administrators can conduct an investigation. Reported in: ambridgeconnection.com, September 10.

Knoxville, Tennessee

A mother from Knoxville believes the *New York Times* bestseller *The Immortal Life of Henrietta Lacks* has too

much graphic information for her 15-year-old son and should not have been assigned as summer reading. “I consider the book pornographic,” Jackie Sims said. “There’s so many ways to say things without being graphic in nature, and that’s the problem I have with the book.”

Her son has been provided with an alternate text (*Phineas Gage: A Gruesome but True Story About Brain Science*), per district policy, but Sims said she wants *The Immortal Life of Henrietta Lacks* out of the hands of all Knox County Schools students.

The book, by science writer Rebecca Skloot, details the true story of a poor black tobacco farmer whose cervical cancer cells were taken without her knowledge in 1951. The cells, which scientists referred to as HeLa, went on to become a vital tool in medicine, helping to develop the polio vaccine, in vitro fertilization and other major scientific breakthroughs. The book was published in 2011 and has won numerous awards from medical and scientific organizations.

Despite the book’s success, Sims thinks it should be told in a “different way.” “I just feel that strongly about it being out of the hands of our children,” she says. There are about 59,000 students in the school system, which includes about 90 schools. “I was shocked that there was so much graphic information in the book,” Sims said.

Other parents in the district worry that this one mother’s objection to the book will threaten the experience for all the students. “To try and stop the book from being read by all students is, to me, a modern-day kind of book burning,” Shelly Higgins, the parent of an eighth-grader, told the local television station. “My major point is: Don’t take that opportunity away from all students.”

Skloot responded to the controversy, saying, “Just in time for Banned Books Week, a parent in Tennessee has confused gynecology with pornography and is trying to get my book banned from the Knoxville high school system...I hope the students of Knoxville will be able to continue to learn about Henrietta and the important lessons her story can teach them. Because my book is many things: It’s a story of race and medicine, bioethics, science illiteracy, the importance of education and equality and science and so much more. But it is not anything resembling pornography.”

Knoxville school district officials said they place a lot of weight on teachers’ judgment in selecting books, as long as they fit within the district’s guidelines. “We feel very strongly that teachers and administrators will make the best instructional decisions for their school communities,” Millicent Smith, the district’s executive director of curriculum, said.

The Knox County Schools Board of Education updated its policy on “sensitive” content last year, said current board chair Doug Harris. “We give teachers guidance to make sure that they’re aware of the books that they’re putting in the classroom,” Harris added. Reported in: *Huffington Post*, September 8; *wbir.com*, September 7; *Los Angeles Times*, September 8.

Nashville, Tennessee

Kelly Sparkman tries to keep up with what her son reads at school, but she hadn’t read the most recent book until her son told her about the “bad words.” When the seventh-grader at Nashville Prep was hesitant to discuss the rest of the book, Sparkman gave it a read. What she found in the novel angered her; it also led to school board member Amy Frogge calling for the closure of the charter school, sparking the latest fight between Frogge and charter founder Ravi Gupta.

“It would be very embarrassing for me if I were 12 years old to have to read some of that stuff in front of boys,” said Sparkman, 50. “I was embarrassed reading it in front of my mother, and it’s my mother.”

Her son and other middle school students at RePublic Schools charter schools in Nashville are reading *City of Thieves*, by David Benioff, a co-creator of the HBO version of “Game of Thrones” and writer of the script for the film adaptation of *The Kite Runner*. The 2008 work of historical fiction chronicles the perils and lives of two boys in World War II-era Leningrad. The book includes profanity and sexually explicit scenes, Sparkman said.

Gupta, CEO of RePublic Schools, acknowledges there is mature content in the book. But he argued that the school’s students are ready for the novel. He also noted the charter operator changed portions of the book deemed inappropriate for middle school students.

“We changed scenes involving ‘sex’ to scenes involving ‘kissing.’ We changed curse words like ‘s**t’ to ‘poop.’ We also redacted whole sections that involved mature scenes,” Gupta wrote in the post. Gupta did not comment on the potential violations of copyright involved in such editing. He added, “I am sure we missed a word here and a word there.”

Gupta said critics are overstating the mature content remaining in the edited version of the text. That’s not true, argued Sparkman and Frogge. When Frogge, perhaps the loudest voice against charter schools on the Metro board of education, learned of the assignment, she sent an email to two Metro Nashville Public Schools officials expressing concerns with the choice. Gupta wrote the blog post criticizing Frogge and the scrutiny of the text after he received a copy of her email.

“Whoever assigned the book made a half-hearted attempt to censor some of the foul language, but left plenty of bad language and details intact, including passages that degrade women and glorify casual sex,” Frogge wrote in a Facebook post responding to Gupta.

Gupta and Frogge have sparred before over what happens at Nashville Prep: In the past, Frogge called for an investigation after she said parents described types of discipline they found inappropriate. The district denied those allegations after Alan Coverstone, director of innovation for the district, looked into the allegations. Gupta said in a statement that Frogge continues to use inaccurate information to unfairly attack Nashville Prep and RePublic Schools.

“It’s sad and revealing that she focuses so much time and resources attempting to tear down one of our city’s highest-performing schools instead of trying to replicate its success,” Gupta said, noting Nashville Prep’s test scores are some of the highest in the state.

Timothy and Sheri Patterson don’t mind that their son was assigned *City of Thieves*. The Pattersons said their 12-year-old attends Liberty Collegiate Academy, a charter school under the same RePublic Schools umbrella as Nashville Prep, and really enjoys the novel.

“As an adult we get a joke from Sponge Bob on one level and children get it on a much more innocent level. The book is appropriate because it tells of two young boys going through a rough time and how they handle situations,” the Pattersons said. “Our children are exposed to more sex and language watching commercials between the approved shows they watch on TV.”

Sparkman said her son’s teacher said he had to read the book. After she said the teacher would not agree to allow her son to read a different book, Sparkman decided to mark out everything she considered inappropriate. She fears her son could face reprisals because of her complaints, but she didn’t want to let him read a book that’s “basically the same thing” as the popular but explicit *Fifty Shades of Grey*.

Gupta said the schools plan to continue teaching the book in its redacted version. Reported in: *Nashville Tennessean*, September 8.

Troup, Texas

An East Texas mother doesn’t want to be identified, but she’s challenging the Troup School District after she says her son was instructed to read a book she describes as vulgar.

The Things They Carried is a highly acclaimed series of short stories about the Vietnam War.

“It is complete garbage, trash,” said the mother. “That book has nothing . . . there’s nothing there that will benefit them physically, emotionally—mentally, morally, spiritually to be used as an educational tool,” she said.

She says she noticed her son’s English grade was suffering, so she started investigating. “My daughter which is a classmate of his who is taking the same AP class said some of it also came from the book that they are required to read during summer,” she said. She said the book is filled with sexual content and profanity.

“If I don’t voice this out, it’s a failure to me as a mom,” she said. Reported in: *cbs19.tv*, September 21.

internet

Paris, France

Google’s informal appeal against a French order to apply the so-called “right to be forgotten” to all of its

global internet services and domains, not just those in Europe, has been rejected. The president of the Commission Nationale de l’Informatique et des Libertés (CNIL), France’s data protection authority, gave a number of reasons for the rejection, including the fact that European orders to de-list information from search results could be easily circumvented if links were still available on Google’s other domains.

CNIL’s president also claimed that “this decision does not show any willingness on the part of the CNIL to apply French law extraterritorially. It simply requests full observance of European legislation by non European players offering their services in Europe.”

Google disagrees with CNIL’s stance. In a July blog post regarding the case, the company’s global privacy chief, Peter Fleischer, wrote: “If the CNIL’s proposed approach were to be embraced as the standard for internet regulation, we would find ourselves in a race to the bottom. In the end, the internet would only be as free as the world’s least free place. We believe that no one country should have the authority to control what content someone in a second country can access.”

As far as CNIL is concerned, Google must now comply with its order. “Otherwise, the President of the CNIL may designate a Rapporteur who may refer to the CNIL’s sanctions committee with a view of obtaining a ruling on this matter.” Those sanctions could be severe. According to *The Guardian*: “CNIL will likely begin to apply sanctions including the possibility of a fine in the region of €300,000 against Google, should the company refuse to comply with the order. Under incoming French regulation the fine could increase to between 2% and 5% of global operating costs.” For 2014, Google’s total operating costs were just under \$50 billion, so potentially the fine could be from \$1 billion to \$2.5 billion (€900 million to €2.2 billion).

If Google is fined by CNIL in this way, it can then make a formal appeal to the French supreme court for administrative justice and argue its case in detail. Since important issues are at stake for both the company and the internet itself, and the French government is unlikely to back down in its threat to impose fines, it seems likely that Google will end up taking this route. Reported in: *arstechnica.com*, September 21.

foreign

Auckland, New Zealand

New Zealand has banned its first book in 22 years after an award-winning New Zealand author’s novel was criticized for its offensive language and gratuitous sexual imagery. *Into the River*, a young adult title by New Zealand author Ted Dawe, was taken out of circulation by the country’s Film and Literature Board following complaints from family advocacy group, Family First.

The group objects to the graphic language and themes contained in the book, including “strong offensive language, strong sexual descriptions (and) covers serious things like pedophilia and sexual abuse,” according to Bob McCoskrie, National Director, Family First NZ.

According to McCoskrie, the book contains “highly offensive language and gratuitous sexual content.” He says that Family First never called for a ban, only an age restriction, but that parents that he has contacted are sympathetic to the group’s position.

“I’ve read it to parents, I’ve sat with a group of fathers, none of them want their children to be reading it. I wouldn’t want my daughter to be hanging around with people who have been reading it,” he said.

The book had been given an R-14 restriction, which was later removed by the deputy chief censor, Nic McCully. When the age restriction was lifted, Family First complained and the Film and Literature Board of Review placed the book on the restriction order, meaning it cannot be distributed or displayed anywhere in New Zealand.

If the order is breached, according to the Film and Literature Board’s website, individuals are liable for a fine of NZ\$3,000 (\$1,883) and companies NZ\$10,000 (\$6,278).

The author stands by his work, a coming of age tale that sees a Maori boy from rural New Zealand thrust into an elite Auckland boarding school, and says his contemporaries in the young adult fiction world “by and large support” him.

“We know the rules about writing for these groups. When writing for ‘YA’ you generally can have the same themes as for adults but younger protagonists.” He said books provide a safe space for teens to learn about topics, which they may not otherwise be able to discuss with their parents, teachers or even peers.

“There comes a stage in the life of a child where they make the transition to adulthood, they have to walk free of

their family, have to walk into spaces which may be dangerous,” he added. “This is what young adult fiction prepares them for. I understand adults who get upset (with some of the topics) but often their children are the ones who can’t discuss these things with their parents. In the safety of a novel they can learn about this.”

The ban prompted a lively debate in New Zealand about the nature of free speech and what steps, if any, are needed to protect certain groups from exposure to unsuitable content.

“It’s most concerning that it’s happening in this country,” Booksellers New Zealand chief executive Lincoln Gould was quoted as saying.

“Most of my friends are shocked by this, embarrassed that they live in a country where this is happening,” Dawe told CNN. “It’s very much out of step with the way ordinary New Zealanders feel about freedom of expression.”

The book’s publisher, Penguin Random House New Zealand, issued a statement in support of the author, saying it was “disappointed” that it was subject to a ban. “The book deals with difficult issues such as bullying and racism, which are topics adolescents should be able to read about as they may well experience these issues in their own lives.

“Penguin Random House believes that young people benefit from having access to coming of age books that help them to understand the complex society in which they live.”

The book won the Supreme Margaret Mahy Book of the Year award at the 2013 NZ Post Children’s Book Awards, which, ironically, brought it to greater prominence and, in some circles, notoriety. Dawe also was named an Honorary Literary Fellow by the New Zealand Society of Authors in February.

The order will remain in place until the Film and Literature Board makes a further decision on a permanent classification for the book. Reported in: cnn.com, September 8. □

from the bench



U.S. Supreme Court

The Authors Guild on October 16 vowed to take its case against Google to the U.S. Supreme Court after an appeals court said the technology giant's digital library does not violate the copyrights of authors. The organization, which represents published authors and agents, has been engaged in a legal battle with Google since 2005.

"We are disheartened that the court was unable to comprehend the grave impact that this decision, if left standing, could have on copyright incentives and, ultimately, our literary heritage," Mary Rasenberger, executive director of the Authors Guild, said in a statement. "We trust that the Supreme Court will see fit to correct the Second Circuit's reductive understanding of fair use, and to recognize Google's seizure of property as a serious threat to writers and their livelihoods, one which will affect the depth, resilience and vitality of our intellectual culture."

A unanimous three-judge panel of the U.S. Court of Appeals for the Second Circuit had concluded that Google's scanning millions of copyrighted books wasn't infringement because what the company makes viewable online is so limited. The decision affirmed a lower-court ruling.

The case stretches back to 2005 when the Authors Guild accused Google of "massive copyright infringement" in a federal lawsuit. Google, which sells ads around its search results, has scanned more than twenty million books since 2004 when it struck an agreement with several big research libraries to digitally copy their collections, according to court papers.

Google allows people to search the texts of the copied books but users see only tiny snippets at a time.

Here's the bottom line from Second Circuit Judge Pierre Leval, who wrote the opinion:

"In sum, we conclude that: (1) Google's unauthorized digitizing of copyright-protected works, creation of a search functionality, and display of snippets from those works are non-infringing fair uses. The purpose of the copying is highly transformative, the public display of text is limited, and the revelations do not provide a significant market substitute for the protected aspects of the originals. Google's commercial nature and profit motivation do not justify denial of fair use. (2) Google's provision of digitized copies to the libraries that supplied the books, on the understanding that the libraries will use the copies in a manner consistent with the copyright law, also does not constitute infringement."

The case was an appeal of U.S. Circuit Judge Denny Chin's ruling from 2013 that also took Google's side. In his decision, Judge Chin emphasized the "public benefits" of Google Books, saying it allows scholars to analyze huge amounts of data, preserves and expands access to books and generates new audiences, potentially creating new sources of income for authors and publishers.

Google stood to lose billions of dollars if it lost the case. Under copyright law, the minimum damages for infringement is \$750 per work. The company has insisted it's in compliance with copyright law, describing Google Books as a card catalog for the digital age. Reported in: *insidehighered.com*, October 19; *Wall Street Journal*, October 16.

schools

Fort Collins, Colorado

A judge ruled recently that a post on a high school's Facebook page about a school board candidate in a neighboring school district constituted an illegal campaign contribution. Even though no money was given to the candidate, the judge ruled that the post's influence had intrinsic value.

The debacle began on an August day around noon, when the principal at Liberty Common High School in Fort Collins took to the school's Facebook page to post an article from a local newspaper announcing that a woman named Tomi Grundvig would run for a seat on the school board in a neighboring school district. Grundvig, a substitute teacher and a nurse, had a child attending Liberty Common.

"Liberty Common High School parent Mrs. Tomi Grundvig announced she's running for a seat on the Thompson School District Board of Education," the post on the school's Facebook page read. "*Loveland Reporter-Herald* story about the position here."

An hour later, the principal of Liberty Common went to his personal Facebook page and shared the post he made on Liberty Common's page, calling Grundvig an "excellent education leader" who was "stepping up to offer sensible stewardship" of Thompson's School District.

The principal, Bob Schaffer, knew something about campaigns too—he previously served as a Republican congressman and ran for U.S. Senate twice. At the time, Schaffer had about 3,900 Facebook friends.

The post caught the eye of Gil Barela, the campaign manager for Grundvig’s competitor Pam Howard. Barela filed suit against Liberty Common High School, arguing that the well-known principal’s posts constituted free publicity for Grundvig and violated Colorado’s Fair Campaign Practices Act, which prohibits wealthy contributors and special interest groups from exercising “a disproportionate level of influence over the political process.”

Schaffer has argued that his post on the school’s Facebook page was “clinical” and politically neutral and that he’s free to post whatever favorable opinions he likes on his personal Facebook page.

But Administrative Law Judge Matthew Norwood agreed with Barela, ordering Liberty Common High School to take its post down. The judge wrote that in posting a link to the school’s Facebook page, Liberty Common indirectly gave “a thing of value,” i.e., publicity, to Grundvig. “This is supported by Mr. Schaffer’s favorable ‘share’ concerning Ms. Grundvig,” the judge wrote.

The judge continued to say that although most of the people reading the post may have been in Liberty Common’s school district, and not eligible to vote in the school district where Grundvig was running, “the posting had the effect of drumming up support for the candidate.”

“[T]he reach of Facebook is very wide,” Judge Norwood added.

Barela initially asked the court to order Liberty Common to post a statement on Facebook saying that it does not support any candidate in the neighboring district’s election. But Judge Norwood denied that request, ordering only that Liberty Common remove the offending post.

“Posting such statements and links on the school’s Facebook page will bring about more ‘liking,’ ‘sharing,’ and commenting and will further embroil the school in election politics,” Norwood wrote, according to the *Coloradan*. “The less said on the school’s Facebook page about candidates and elections, the better.”

Schaffer told the paper the school had spent about \$2,000 on top of staff time to respond to the charges, and it will likely not appeal the ruling. Liberty Common High School appears to have removed the post from their Facebook page. Reported in: arstechnica.com, October 26.

Itawamba County, Mississippi

The U.S. Court of Appeals for the Fifth Circuit became the most recent of the federal circuit courts to expand the power of secondary schools to punish students for their off-campus internet speech. In an *en banc* decision in *Bell v. Itawamba County School Board*, the Fifth Circuit took a significant bite out of students’ First Amendment rights

outside the schoolhouse gates. The decision set a disappointing precedent that will not only impact students in elementary, junior high, and high school, but could very well leak onto college campuses.

The case began in 2011 after Taylor Bell, a high school senior in Itawamba County, Mississippi, posted a rap song he had written and recorded to his Facebook page and later to YouTube, outside of school hours and away from school grounds. The recording raised allegations of sexual misconduct by two coaches at Bell’s high school. The lyrics, written and performed by Bell, included profanity and several lines that the school board (and ultimately the court) deemed to be “threatening, harassing, and intimidating language.”

For example: “Heard you textin number 25 / you want to get it on / white dude, guess you got a thing for them yellow bones / looking down girls shirts / drool running down your mouth / you fucking with the wrong one / going to get a pistol down your mouth / Boww[.]”

The day after the recording was posted to Facebook, one of the coaches learned of it, listened to the song on a student’s smartphone, and informed the school principal, who in turn informed the superintendent. Bell was suspended for seven days and later placed in an alternative school for the remainder of the grading period. The school board upheld the discipline, ruling that Bell “threatened, harassed, and intimidated school employees” in violation of school district policy.

Bell sued, claiming violation of his First Amendment rights. The federal district court granted summary judgment to the school board, but was reversed by a divided Fifth Circuit panel that held the discipline did indeed violate Bell’s free speech rights. That decision was vacated earlier this year when the Fifth Circuit granted *en banc* review (i.e., a rehearing by all judges on the circuit’s bench).

The *en banc* majority opinion, written by Judge Rhesa Hawkins Barksdale, ruled in favor of the school board, applying the U.S. Supreme Court’s 1969 decision in *Tinker v. Des Moines Independent Community School District*. *Tinker* famously held that student First Amendment rights do not end at the “schoolhouse gate” and defined the circumstances under which a K–12 public school may punish student speech. In *Tinker*, the Supreme Court held that punishment could be issued where speech materially and substantially disrupts school operations or where administrators reasonably forecast such a disruption.

The Bell majority’s holding extends *Tinker* to a student’s off-campus social media posts. It states that a school may—consistent with the First Amendment—punish off-campus speech directed at the school community and “reasonably understood by school officials to be threatening, harassing, and intimidating to a teacher” if it meets the *Tinker* substantial disruption standard.

In coming to its decision, the appellate court raised several points that, by its reasoning, warranted extending

Tinker to the facts at hand. The court reasoned that the advent of internet communications, social media, and smartphones has blurred the boundaries between in-school and out-of-school communications. It also focused on “the recent rise in incidents of violence against school communities.” School administrators, according to the court, require clarity in their ability to react preemptively to avoid violence.

The majority then concluded that administrators could have reasonably predicted Bell’s recording would cause a substantial disruption in school, based on the fact that Bell specifically identified the two coaches, mentioned actions that could result in serious injury or death, and intended for his speech to reach the school community (indeed, Bell stated he wanted to raise awareness about the alleged sexual misconduct). The court seemed to take as a given that a reference to violence in relation to a specific teacher was enough to reasonably forecast a substantial disruption: “It . . . goes without saying that threatening, harassing, and intimidating a teacher impedes, if not destroys, the ability to teach; it impedes, if not destroys, the ability to educate.”

There are several major problems that will make the decision difficult to cabin, despite cautions issued in the concurrences. Though the majority claimed to decide the case narrowly on the facts before it rather than announcing a sweeping new rule of law, several of the four dissents expressed skepticism that the ruling can or will be so limited going forward.

While the majority raises the issue of school violence, it does not explain why a lowered First Amendment standard is necessary in order to empower school authorities to act preemptively. The First Amendment does not, after all, protect “true threats,” whether made by adults or K–12 students. The court found it unnecessary to address whether the rap lyrics at issue were true threats because “regardless . . . they constitute threats, harassment, and intimidation, as a layperson would understand the terms.” It goes unexplained, however, why a layperson’s understanding of these words should trump the precise legal standard fashioned by the U.S. Supreme Court for true threats just because off-campus speech by students is at issue.

As Judge Edward Prado’s dissent points out, it is highly doubtful Bell’s speech would meet the constitutional true threat standard: “[I]n the context of expressive rap music protesting the sexual misconduct of faculty members, no reasonable juror could conclude that Bell’s rap lyrics constituted a ‘true threat.’” The majority instead appears to adopt the view that, if the off-campus speech has to do with a school, administrators should be able to apply a lower “threat” standard than would be permissible if the student referenced anyone or anything else. This should be concerning to any student, like Bell, whose artistic expression (or any expression) references his or her school. If what you have to say could be interpreted by a “layperson” to

constitute threats, harassment, or intimidation, you’d better keep it under wraps until you graduate from high school (and possibly college).

The flexibility the *Bell* court has now provided administrators in defining punishable speech should add to students’ concern. The court deferred to the school board’s conclusion that it could punish language that “threatened, harassed, and intimidated school employees.” Not only is this a vague standard, defined by a layperson’s understanding of the words, but it comes directly from the school district’s policy. How will the next court distinguish Bell’s holding from Facebook posts that allegedly violate a school policy against “harassing, offensive, or bullying” language, as those words are understood by a reasonable administrator? One could argue that such a policy does not raise the same school violence concerns as Bell, but another could argue that it does, especially given the attention paid in recent years to student cyberbullying.

Finally, the court’s holding underlines the fundamental difficulty in extending *Tinker* to off-campus speech: It is difficult if not impossible to break down the barrier of *Tinker*’s schoolhouse gate without creating a policy of 24/7 school authority over student speech. Some federal circuit courts extending *Tinker* off-campus have attempted to impose boundaries by requiring a nexus between student speech and its foreseeable impact on campus. The *Bell* court appears to impose a similar requirement by noting that the student intended his song to be heard by the school community. The problem with this approach, however, is that in practice, it will almost always favor school intervention. Just as the *Bell* court justified the regulation of off-campus conduct by citing the ubiquitous nature of social media, other courts will find a nexus to the school on the same grounds. It is nearly impossible for a student to engage in internet speech without potentially reaching schoolmates, their parents, and ultimately administrators.

The *Bell* decision is another case broadening school authority to encroach on student speech where it would otherwise enjoy full First Amendment protection. Of the circuit courts to address off-campus internet speech in the secondary school context, only the Third Circuit, in *J.S. v. Blue Mountain School District*, decided in 2011, has declined to hold that *Tinker* applies, finding it unnecessary to reach the issue at the time. Reported in: *thefire*.org, September 2.

Pearl, Mississippi

A teacher who demanded access to a student’s Facebook account to investigate threatening and offensive remarks is immune from a lawsuit because it was not clearly established that such a search would violate the student’s rights, a federal appeals court has ruled.

The case stems from a 2007 feud between two Mississippi high school cheerleaders and raises an important

question: whether school officials may demand social media account and password information from students.

But for now, the only issue decided by a three-judge panel of the U.S. Court of Appeals for the Fifth Circuit, in New Orleans, was whether the teacher and other school officials had qualified immunity in the lawsuit filed by the student whose Facebook account was searched.

“We conclude that school officials acting in 2007 did not have fair warning that they could not, consistent with the Fourth Amendment, access a student’s social-networking account upon receiving information that the student had sent threatening online messages to another student, where those remarks concerned school activities and where the quarrel began at a school-related function,” the appeals court said in a unanimous opinion.

The facts in the case are somewhat in dispute, but stem from a trip by the cheerleading squad of Pearl High School to a local TV station. On the bus ride home, a freshman cheerleader identified as M.J. exchanged words with the captain of the squad, a girl identified as K.E.

The next day, teacher and cheer squad sponsor Tommie Hill was informed that M.J. had cursed and threatened K.E. on the bus ride, and the teacher later learned that M.J. had taken the feud to her Facebook page. Hill spoke to all the cheerleaders about the dangers of communicating on Facebook, and she demanded that all provide their usernames and passwords so she could inspect their accounts.

M.J.’s Facebook messages to K.E. included statements such as, “i am so sick of you bossing me around,” and “if i have a problem with you . . . i will confront you about it and im not gonna be nice about it.”

The teacher considered these and other statements to be offensive and threatening, and she suspended M.J. from the cheer squad for two weeks, among other sanctions related to the team.

Pearl High School administrators backed the teacher. M.J.’s parents sued on her behalf, raising First and Fourth Amendment claims. A federal district court denied immunity to the teacher and school officials, and said there were enough disputed facts to allow the lawsuit to proceed.

The educators appealed the denial of immunity. In its September 15 decision in *Jackson v. Ladner*, the Fifth Circuit court said the facts of the case were unique and there was a “dearth of pertinent case law” about whether the school officials’ actions violated M.J.’s First Amendment free speech right or Fourth Amendment right to be free an unreasonable search.

“We express no opinion regarding whether the defendants’ conduct violated” either constitutional right, the court said.

The appeals panel sent the case back for further proceedings, though because the individual school officials are the only defendants (in other words, the school district was not named as a defendant), that would be the end of M.J.’s case. Reported in: *Education Week*, September 17.

Doylestown, Pennsylvania

A Pennsylvania school district that fired a teacher who criticized and insulted her students on her personal blog did not violate her First Amendment rights, a federal appeals court ruled September 4 in a 2-1 decision.

The U.S. Court of Appeals for the Third Circuit ruled that high school English teacher Natalie Munroe’s blog posts, which contained profane rants calling students “lazy,” “frightfully dim” and “rat-like,” constituted matters of public concern according to the *Pickering* test, a legal balancing test of free speech rights for public employees based on *Pickering v. Board of Education* (1968).

But the school district’s interests trumped those of Munroe, whose inflammatory comments created disruption, said Judge Robert Cowen in the majority opinion.

“The First Amendment does not require a school district to continue to employ a teacher who expresses the kind of hostility and disgust against her students that Munroe did on her blog and then publicly defends such comments to the media,” Cowen said.

Kimberly Boyer-Cohen, an attorney who represented the school district, said she was pleased with the ruling.

Munroe’s blog, which she started in 2009, was publicly available online but intended for Munroe’s family and friends, according to court documents. Although much of the blog contained innocuous material such as recipes and movie reviews, the posts containing derogatory remarks came to light in 2011 and began to be circulated by students.

In one post that featured prominently in the court ruling, Munroe lamented the “canned” comments available for teachers to evaluate students on their report cards, adding her own list of negative comments she wished she could write, such as “seems smarter than she actually is,” “lazy asshole” and “one of the most annoying students I’ve had the displeasure of being locked in a room with for an extended time.”

The blog posts caused a frenzy among many parents, who asked that their children be placed in other classes.

“To say it was a disruption to the learning environment is an understatement,” said principal Abram Lucabaugh in court documents. The school district claimed that it ultimately fired Munroe not for the blog posts, but for unsatisfactory performance evaluations, which dissenting Judge Thomas Ambro characterized as a contrived pretext for her dismissal.

“I have no doubt the School District was well aware that firing Munroe for her blog posts and media tour would land it in constitutional hot water,” Ambro said in his dissent. “More than enough evidence suggests that firing her on performance grounds was a pretext for its real reason—she had spoken out to friends on a blog, it became public.”

Ambro also argued that Munroe’s interviews with news media could have played a role in her firing. He pointed out that after Munroe appeared on Fox News defending her comments, school district official John Gamble told

colleagues in an email that he was “confident [the Board] [was] doing the right thing.”

“To remove any doubt about what ‘doing the right thing’ refers to, we need only look at the bottom of Gamble’s email, which makes clear it was sent in response to the ‘termination plan’ Superintendent N. Robert Laws had circulated,” Ambro said, referring to this correspondence as “‘smoking-gun’ emails.”

The ruling affirmed a lower court’s judgment against Munroe last year, which concluded that “[Munroe’s] speech, in both effect and tone, was sufficiently disruptive so as to diminish any legitimate interest in its expression, and thus her expression was not protected.”

Steven Rovner, an attorney for Munroe, said that Munroe may request that the entire Third Circuit review her case.

“We believe the courts are not right on this issue, and we’re still fighting for Natalie and her constitutional rights,” he said in the interview.

Student Press Law Center Executive Director Frank LoMonte said the case was a straightforward application of First Amendment precedent. “As far as the First Amendment analysis goes, the majority was just doing exactly what the Supreme Court has told them to do,” he said. “As a legal matter, leaving this teacher’s career interests aside, this is not a bad decision for the First Amendment at all.”

The outpouring of parent concerns—which culminated in many parents “opting out” their children from Munroe’s class—shows a tangible harm, which distinguishes this case from others where the harm is more difficult to prove, LoMonte said. He said that although the case was thin in terms of its First Amendment applicability, he was concerned by the possibility raised in the dissent that Munroe’s media interviews could have led to her firing.

“If the straw that broke the camel’s back was [Munroe’s] remarks to the news media, then I’m more concerned because we certainly don’t want public employees to be gun-shy about giving candid interviews to the news media about matters of public controversy,” he said. “All in all, I don’t think she had an especially strong First Amendment case because the speech really did directly bear on the public’s ability to trust her judgment as a schoolteacher.”

LoMonte also praised the Third Circuit’s track record with First Amendment cases, like with two 2011 rulings where the court held that schools may not lightly extend their reach into students’ activities outside of school hours. And in 2001, Justice Samuel Alito, who is now on the Supreme Court, wrote the majority opinion in *Saxe v. State College Area School District*, which held that a broad high school anti-harassment policy prohibited too much speech and violated the First Amendment.

This case comes as courts across the country have grappled with what rights schools have to police students’ off-campus online speech.

In August, a federal judge ruled that a former high school student who was suspended for a two-word sarcastic

tweet can proceed with his lawsuit against the school district. In his ruling, the judge said generally, off-campus statements are protected under the First Amendment unless they are true threats or could reasonably reach the school environment and are “so egregious” that they would cause a substantial disruption at school.

But different courts have varied in their opinion on where that line is drawn. The U.S. Court of Appeals for the Fifth Circuit recently ruled in favor of a Mississippi school district in a First Amendment case where a former high school student was punished for posting online a profanity-filled rap video about two school coaches (see page 148).

One justice who wrote a dissent to the ruling called for the Supreme Court to address the issue of off-campus online speech and to what extent it is protected. Reported in: splc.org, September 10.

student press

Muscatine, Iowa

A federal district court has ruled against Muscatine Community College student journalists’ request for a primary injunction in their lawsuit against some of the school’s top administrators for harassment and intimidation.

The current and former students, some of whom raised more than \$5,000 to start their own independent publication (*The Spotlight*) to escape the college’s control, had asked the court for a preliminary injunction to keep the administration from implementing changes that they claimed marginalized and censored the student newspaper, *The Calumet*.

The students had filed suit against several top MCC administrators in May, arguing that administrators allowed faculty and staff members to harass and intimidate student journalists for their publication of unwanted news stories. Administrators also removed *The Calumet*’s full-time faculty adviser and replaced him with a part-time adjunct instructor, modified the fall 2015 class schedule “to marginalize the journalism program” and reduced funding to the program, the students charged, saying these actions violated their First Amendment rights.

In a 33-page ruling released September 30, Chief Judge James E. Gritzner of the U.S. District Court for the Southern District of Iowa wrote that the students did not establish any of the four factors necessary to receive an injunction: a likelihood of success on the case’s merits, irreparable harm to the plaintiffs, that the balance of harms of granting or denying the injunction weighs in the students’ favor and that the injunction is in the public’s interest.

Thus, Gritzner denied the request for a primary injunction. He also found the claims of nine of the twelve former MCC students—including *The Calumet*’s former editor-in-chief—to be moot and dismissed them as plaintiffs.

In the ruling, Gritzner wrote that the students have not demonstrated a likelihood of success in showing that

administrators' comments about some of the articles—including a story about a grant that the then-math and science department chairman Rick Boyer won—had a chilling effect on the journalists.

Boyer had objected to the photograph of him that *The Calumet* ran alongside images of other grant recipients and said the newspaper must obtain his permission in the future before running his photograph or “a photograph of anyone else on campus.” *The Calumet* wrote an article about Boyer's objection with the offending photograph printed four times.

“Seemingly in recognition of the fact there was no chilling effect, Plaintiffs argue that they are more tenacious than average student journalists and that Boyer's call and the administration's response would have chilled persons of ordinary firmness in their position. The Court does not discount Plaintiffs' tenacity, but nor does the Court modify the standard,” Gritzner wrote. “The Court finds it unlikely that Plaintiffs will demonstrate that even student journalists of ordinary firmness in Plaintiffs' position would have been chilled by a negative reaction and vocal complaint from a faculty member with no control over their paper.”

Gritzner also said that while he doubts “that an adjunct would be able to dedicate the same level of commitment to a course of extracurricular activity as a full-time professor,” he found it unlikely that the student journalists would be able to show that the administrators' removal of Jim Compton as the paper's full-time adviser was a retaliatory action or an attempt to restrain the paper's speech.

The MCC administrators have said they needed Compton to return to teaching English, which he had done in the past. The students' attorney, Clark, said in a previous interview with the SPLC that the lawsuit was not insisting that Compton remain the paper's adviser, but rather the position remain full-time.

Gritzner wrote that the evidence showed MCC administrators would have changed the position of the adviser to be part-time for a legitimate reason other than retaliation. Administrators have said that the decision to hire an adjunct stemmed from budget constraints and that the adjunct tapped to advise *The Calumet* has “significant journalism experience.”

Gritzner also said that there was no evidence that the change in time of the school's Beginning News Writing course was an effort to retaliate against *The Calumet* (partly since the course is not a requirement to join the paper). He concluded that the students didn't demonstrate a likelihood of success that the administrators' cut the paper's funding, which is controlled by the Student Senate—or that they proved the funding was cut at all.

The Student Senate did not fund the student newspaper for the 2014–15 school year, and the former MCC president Bob Allbee allocated \$6,800 to the paper from another source. That is more than the Student Senate granted *The Calumet* in any year between 2008 and 2015, the ruling

said. (*The Calumet* has been requesting about \$15,000 for the past couple years).

Gritzner also ruled that granting a preliminary injunction could harm the MCC administration if the college were prevented from hiring an adjunct.

“Although replacing a full-time faculty member with an adjunct might impact students and *The Calumet*, it is not the Court's role to direct how Defendants allocate their scarce resources,” he said. Reported in: splc.org, September 30.

university

Lawrence, Kansas

The three judges on the Kansas Court of Appeals flagged from the start of a decision issued September 25 that they didn't approve of the content of a series of tweets by Navid Yeasin, whom the University of Kansas expelled in part on the basis of those remarks about his ex-girlfriend. The tweets were “puerile and sexually harassing,” the judges wrote.

But the judges went on to say that doesn't matter. The university never demonstrated that Yeasin made the comments on Twitter while on campus or in connection with any university activity, and the university's student conduct code thus doesn't cover the tweets, the court found.

The case has been closely watched beyond Kansas because of two issues—only one of which was addressed in the ruling, and that one only in part. That issue is the university's claim that it is required not only by its student conduct code but by Title IX of the Education Amendments of 1972 to punish offensive remarks made by one student to another on Twitter if they create a hostile environment for the second student. The appeals court rejected that argument although it did so largely on the way the university created its code of conduct and punished Yeasin.

The other issue was whether Twitter posts are automatically protected by the First Amendment as free speech. While briefs by the American Civil Liberties Union and others argued that this protection does exist, the appeals court did not address that issue.

At a time when administrators on many campuses are being pressed by some students to punish other students for comments made on Twitter, Yik Yak or other social media sites, the Kansas case may demonstrate how legally difficult that may be.

The Kansas dispute stems from an incident that led to the end of a tumultuous relationship between Yeasin and a female student who is identified only as W in the decision. During the summer of 2013 they had a fight when Yeasin took W to see her therapist and he read Facebook messages on her phone that angered him. When she returned, they argued and, for some time, he refused to let her out of the car or to return her phone. Yeasin was charged with criminal restraint, battery and criminal deprivation of

property and entered into a diversion agreement to deal with the charges.

When the next academic year started, W filed a complaint with university authorities, who ordered Yeasin not to contact W. The order banned him “from initiating, or contributing through third parties, to any physical, verbal, electronic or written communication” with W.

Yeasin continued, however, to post on Twitter about her. While he didn’t name W, people who knew she was his ex could figure out that he was talking about her. One tweet, for example, said, “Jesus Navid, how is it that you always end up dating the psycho bitches? #butreallyguys.” Several other comments on Twitter (some more vulgar than the one quoted in the previous sentence) referenced breast implants. W, who has a rib cage deformity, has breast implants.

The university warned Yeasin not to tweet about W, and raised the possibility of expelling him, but he continued to do so. He at one point denied that some tweets with the hashtag “#crazybitch” were about W, but he admitted the hashtags “#crazyassex” and “#psycho” were about her. Eventually he was expelled. A lower court found that the university lacked the authority to do so, but stayed the ruling until the appeals court ruled.

The appeals court’s focus was on the language in the student conduct code. (The code has since been revised in various ways, but the ruling is based on the code as it existed at the time it was used to expel Yeasin.)

The code said this on where it could not be applied: “The university may not institute disciplinary proceedings unless the alleged violation(s) giving rise to the disciplinary action occurs on university premises or at university-sponsored or -supervised events, or as otherwise required by federal, state or local law.”

The decision notes other places in the university conduct code that reiterate that it applies to conduct on campus or at university events. And when the judges turned to analyzing the way Yeasin was punished, this created a problem, they wrote.

“Faced with a serious complaint of sexual harassment involving two students, the university took prompt action. It investigated the circumstances, separated as best it could the antagonists and removed the cause of the conflict through expulsion. The trouble is, the student code did not give the university authority to act when the misconduct occurred somewhere other than its campus or at university-sponsored or -supervised events. There is no proof in the record that Yeasin posted the tweets while he was on campus.”

Anticipating this analysis, the university argued that it was covered by the reference to being required to follow federal law. But the Kansas court rejected this argument. The appeals court agreed that the Education Department has warned colleges that they are required to consider whether activity off campus can create a hostile environment for a student on campus, and take action to prevent such an

environment. But the court notes that Yeasin was expelled under provisions of the student code that did not reference federal law, but under provisions that covered only conduct on campus. Further, the court noted that noncampus authorities have the right to take action against Yeasin for anything he does off campus that is illegal.

“It seems obvious that the only environment the university can control is on campus or at university-sponsored or -supervised events. After all, the university is not an agency of law enforcement but is rather an institution of learning,” the decision said.

Based on the student code language, the decision said, there was no need to address broader questions about Title IX obligations or First Amendment protections. Reported in: insidehighered.com, September 28.

privacy

San Francisco, California

Facebook, Twitter and Instagram cannot be forced to relinquish the private social media communications of a murder victim and a witness in a San Francisco murder and gang prosecution, a state appeals court ruled September 8.

In a decision that appears to break new ground, the San Francisco-based First District Court of Appeal sided with Facebook and Twitter, which had argued that federal privacy laws trump a criminal defendant’s right to such protected social media information in pretrial proceedings.

The appeals court noted that the defendants might have a right to the material at trial, but that social media companies such as Facebook and Instagram should not be forced to abandon federal privacy protections earlier in a prosecution. Major criminal justice groups had urged the court to side with the gang defendants, saying the constitutional right to a fair trial outweighs the force of the federal law, known as the Stored Communications Act.

The appeals court disagreed, rejecting the arguments of Lee Sullivan and Derrick Hunter, among a number of defendants awaiting trial on murder charges in connection with the 2013 drive-by shooting death of a 19-year-old man and the wounding of his girlfriend in San Francisco’s Hunters Point neighborhood.

In siding with Facebook and Twitter, the court observed that the legal system is increasingly facing such tough questions involving social media that can pit one right against another. “Use of social media, in its myriad of forms, has become ubiquitous in our society,” the appeals court wrote. “Evidence gathered from social media is becoming equally ubiquitous in our courtrooms.”

San Francisco police had presented evidence that the murder suspects had engaged in “cyber banging” prior to the shootings, posting threats on social media such as Facebook and Instagram. Lawyers for Sullivan and Hunter then sought the public and private social media postings of the

murder victim and a witness, arguing that their activity on Facebook, Instagram and Twitter could be relevant to their defense.

A San Francisco judge agreed, ordering the social media giants to comply with a subpoena for the material. But the appeals court overturned that order.

The defense lawyers, backed in the case by the state public defenders' association, can appeal to the California Supreme Court. Reported in: *San Jose Mercury-News*, September 9.

Washington, D.C.

A U.S. appeals court on August 28 threw out a judge's ruling that would have blocked the National Security Agency from collecting phone metadata under a controversial program that has raised privacy concerns.

The U.S. Court of Appeals for the District of Columbia Circuit said there were not sufficient grounds for the preliminary injunction imposed by the lower court. The ruling was a setback for privacy advocates but did not reach the bigger question of whether the NSA's actions were lawful. It means the massive program to collect and store phone records, disclosed in 2013 by former NSA contractor Edward Snowden, can continue unaffected until it expires at the end of November.

Under the USA FREEDOM Act, which Congress passed in June, the program was allowed to continue for 180 days until new provisions aimed at addressing the privacy issues go into effect.

White House spokesman Josh Earnest said the ruling was "consistent with what this administration has said for some time, which is that we did believe that these capabilities were constitutional."

Larry Klayman, the conservative lawyer who challenged the program, said he would appeal to the Supreme Court. "We are confident of prevailing," he added.

The three-judge panel concluded that the case was not moot despite the change in the law and sent the case back to U.S. District Court Judge Richard Leon for further proceedings.

"Although one could reasonably infer from the evidence presented the government collected plaintiffs' own metadata, one could also conclude the opposite," wrote Judge Janice Rogers Brown. As such, the plaintiffs "fall short of meeting the higher burden of proof required for a preliminary injunction," she added.

Under new provisions that begin in November, the program requires companies such as Verizon Communications and AT&T to collect telephone records the same way that they do now for billing purposes. But instead of routinely feeding U.S. intelligence agencies such data in bulk, the companies would be required to turn it over only in response to a government request approved by the secretive Foreign Intelligence Surveillance Court.

Documents provided by Snowden in 2013 showed the surveillance court secretly approved the collection of millions of raw daily phone records in America.

The program was challenged by Klayman and Charles Strange, the father of a U.S. cryptologist technician killed in Afghanistan in 2011. They won the case in U.S. District Court in Washington in December 2013.

The government said in court papers that the program was authorized under Section 215 of the USA PATRIOT Act, which addresses the FBI's ability to gather business records.

The only other appeals court to rule on the issue is the U.S. Court of Appeals for the Second Circuit in New York, which held in May that the program was unlawful. The court was due to hear new arguments in September over whether an injunction should be imposed.

The case is *NSA v. Klayman*. Reported in: reuters.com, August 28.

national security

New York, New York

A federal district court judge in New York has fully lifted an 11-year-old gag order that the FBI imposed on Nicholas Merrill, the founder of a small internet service provider, to prevent him from speaking about a national security letter served on him in 2004.

It marked the first time such a gag order has been fully lifted since the USA PATRIOT Act in 2001 expanded the FBI's authority to unilaterally demand that certain businesses turn over records simply by writing a letter saying the information is needed for national security purposes. Like other NSL recipients, Merrill was also instructed that he could not mention the order to anyone.

Merrill said the court ruling allowing him to discuss the details of the sealed request in full will allow him to ignite a debate among Americans about the unchecked surveillance powers of the U.S. government.

"For more than a decade, the FBI has fought tooth and nail in order to prevent me from speaking freely about the NSL I received," Merrill said in a press release published by the Calyx Institute, where he serves as director.

U.S. District Court Judge Victor Marrero's decision "vindicates the public's right to know how the FBI uses warrantless surveillance to peer into our digital lives," Merrill said. "I hope today's victory will finally allow Americans to engage in an informed debate about the proper scope of the government's warrantless surveillance powers."

Merrill and the American Civil Liberties Union launched what turned out to be a long legal battle against the FBI in 2004 in the case *Doe v. Ashcroft*. Merrill finally won the right to reveal his own identity in 2010.

The FBI withdrew its national security letter request after Merrill continually refused to comply, but Merrill

decided to keep fighting the gag order. Law students and attorneys of the Media Freedom and Information Access Clinic at Yale Law School represented him in his 2015 case against the Justice Department and the FBI seeking to overturn the gag order.

In his ruling, the judge found no “good reason” to continue to silence Merrill about his experience with the FBI. If Merrill were only allowed to disclose details about the request “in a world in which no threat of terrorism exists,” or in the case that the FBI disclosed the records itself—two extremely unlikely possibilities—it would effectively prevent “accountability of the government to the people,” the judge wrote.

Merrill is not free to talk quite yet, however—he will remain under gag order for 90 days, giving the government time to appeal.

The Electronic Frontier Foundation estimates that over 300,000 national security letters have been issued since 2001. The Justice Department concluded in 2008 that the FBI had abused its power, often gathering information on large numbers of U.S. citizens, infringing on their First Amendment rights, and leaving hardly any paper trail, until changes were adopted in 2006.

The Office of the Director of National Intelligence announced earlier this year that the FBI would start presumptively terminating national security letter nondisclosure orders either three years after the opening of a fully predicated investigation or at the investigation’s close, whichever came earlier. But that change was not retroactive. Reported in: *The Intercept*, September 14.

harassment

Dodge County, Georgia

A man handed six years for threatening a local Georgia court clerk that he would post a sex tape of her on Facebook had his conviction overturned by the state’s Supreme Court. The justices ruled October 5 that the Facebook postings did not constitute criminality or a “true threat” under the law, because the defendant did not express an “intent to commit an act of unlawful violence.”

The case concerns a Georgia landlord named Lister Harrell who took to Facebook in 2013 and threatened a Dodge County court clerk that he would release a sex tape of her if, among other things, a bench warrant wasn’t lifted over his failure to appear in court regarding alleged landlord violations. There was no sex tape, so the state’s high court said that the post—along with a phone call to another clerk—may have been intimidating and embarrassing, but it did not threaten actual violence.

“While Harrell’s speech might well be described as caustic and unpleasant it did not convey ‘a serious expression of an intent to commit an act of unlawful violence,’” the court ruled.

The case comes amid a hodgepodge of nationwide court rulings on the topic as prosecutions for online rants—on Facebook to YouTube—are becoming commonplace. A divided U.S. Supreme Court weighed in on the topic in June in a case concerning a federal threats statute. In that case, the justices said that the conviction of a Pennsylvania man named Anthony Elonis over alleged Facebook threats against an elementary school and estranged wife should be overturned.

“The jury was instructed that the Government need prove only that a reasonable person would regard Elonis’s communications as threats, and that was error. Federal criminal liability generally does not turn solely on the results of an act without considering the defendant’s mental state,” Chief Justice John Roberts wrote for the majority.

The Georgia landlord’s attorney, Thomas Jarriel, applauded the decision, noting that “in this country, you can say a lot things.” Reported in: *arstechnica.com*, October 6.

copyright

Gallitzin, Pennsylvania

In February 2007, Stephanie Lenz, a mother in Gallitzin, went on YouTube and uploaded a 29-second video of her toddler dancing while Prince’s song “Let’s Go Crazy” played in the background. Prince’s publishers objected, Lenz filed a lawsuit, and for more than eight years the case has been symbolic of the clashes over copyright online.

On September 14 the United States Court of Appeals for the Ninth Circuit, in San Francisco, cleared the way for the case to go to trial, and set a guideline that may change the way media companies police their holdings online. In its decision, the three-judge panel ruled that copyright holders must consider fair use before asking services like YouTube to remove videos that include material they control.

The suit, known as the “dancing baby” case, has become famous for its focus on the kind of internet activity that millions of ordinary people engage in, posting candid videos of family and friends that may only incidentally include copyrighted media like songs. The Electronic Frontier Foundation, an advocacy group that represented Lenz in her lawsuit against Universal, called the judges’ decision a victory for internet users.

“Today’s ruling sends a strong message that copyright law does not authorize thoughtless censorship of lawful speech,” Corynne McSherry, the foundation’s legal director, said in a statement.

A spokesman for the Recording Industry Association of America, Jonathan Lamy, said, “We respectfully disagree with the court’s conclusion about the DMCA and the burden the court places upon copyright holders before sending takedown notices,” referring to the 1998 Digital Millennium Copyright Act.

In her suit, Lenz argued that her use of Prince's music was protected by fair use, which allows the use of copyrighted material under certain conditions like commentary, criticism or news reporting.

The case also came to represent the split between Hollywood and Silicon Valley over copyright. The Motion Picture Association of America and the RIAA both supported Universal, which argued that fair use should be considered an "affirmative defense" only when part of an infringement suit. On the other side of the issue, Google, Twitter and Tumblr rallied behind Lenz.

The judges ruled that fair use was "uniquely situated in copyright law so as to be treated differently than traditional affirmative defenses," and copyright holders like Universal must consider fair use before issuing takedown notices.

Even paying "lip service" to the consideration of fair use is not enough, and could expose a copyright holder to liability, the judges ruled. Reported in: *New York Times*, September 14.

periodicals

Lexington, Kentucky

A Kentucky psychiatry board cannot censor the nation's longest-running newspaper columnist for providing advice as a "family psychologist," a federal judge has ruled. John Rosemond, whose Dear Abby-style parenting column is syndicated in more than 200 newspapers, claims he received a threatening cease-and-desist letter from the Kentucky Board of Examiners of Psychology on May 7, 2013.

Rosemond, dubbed a family psychologist in his byline, holds a master's degree in psychology and is licensed to practice North Carolina, but is not qualified to provide psychological services to Kentucky residents, according to the board.

The letter, signed by Assistant Attorney General Brian Judy, further alleged Rosemond's advice that parents of a deadbeat teen confiscate their son's cell phone as a "wake-up call," amounted to professional services rendered.

The article, published February 12 in the *Lexington Herald-Leader*, prompted a complaint from a former board psychologist who criticized Rosemond as "unprofessional and unethical," according to court filings. The board provided Rosemond an opportunity to stop publishing his column in Kentucky voluntarily—an ultimatum which Rosemond says jeopardizes his free speech.

On September 30, U.S. District Court Judge Gregory Van Tatenhove sided with Rosemond. Because the columnist's readers send questions anonymously, his advice is neither professional nor commercial in nature, and therefore cannot embody the "personal nexus between professional and client," Van Tatenhove wrote, barring the board from further interference with publication of Rosemond's column.

"Rosemond's speech deserves the highest level of constitutional protection," the judge said. "To permit the state to halt this lawful expression would result in a harm more concrete and damaging to society than the speculative harm which the state purportedly seeks to avoid, and perhaps that is the 'wake up' call best drawn from the facts of this case," he continued.

Chip Mellor, president of the Institute of Justice, which represented Rosemond, described Van Tatenhove's ruling as "one of the strongest decisions a federal court has ever issued in defense of speech that the government tries to restrict with an occupational-licensing law."

"Judge Van Tatenhove's decision reflects judicial engagement. Unlike other federal courts across the country, he recognized that the government does not get a free pass when it attempts to restrict speech using occupational-licensing laws," Chip Mellor said. "That dedication to evaluating each case with a careful eye is something that all courts should emulate."

Rosemond himself expressed gratitude for the decision. "If the government could censor a nationally syndicated columnist like me, there would be no limit on the sources of parenting advice it could outlaw," he said. "Thankfully, this ruling ensures that parents have the right to decide for themselves where they want to get parenting advice." Reported in: *Courthouse News Service*, October 6.

etc.

Liberty, New York

A federal judge in September chastised Liberty, New York for arresting a man who wrote a profane comment while paying a speeding citation. On May 4, 2012, William Barboza, who was 22 at the time, was nabbed in a speed trap. Since he lives in Connecticut, he decided to pay rather than challenge the ticket.

So Barboza took the invoice he received from the Town of Liberty Justice Court, crossed out "Liberty" and wrote "Tyranny." At the top, he added an expletive-laden sentence in all caps that denigrated the town. Infuriated local officials rejected his payment, forcing him to drive two hours from his home to appear in person. To Barboza's surprise, he was placed under arrest in the middle of the court hearing.

Sullivan County assistant district attorney Robert Zangala came up with the idea of charging Barboza with aggravated harassment because he "communicated with a person by mail in a manner likely to cause annoyance and alarm." Liberty police detectives Melvin Gorr and Steven D'Agata explained that he had no free speech rights because he offended people in the town clerk's office. Barboza was booked and released at 7 p.m. after posting \$200 bail. Barboza and the New York Civil Liberties Union sued to have the "aggravated harassment" law overturned as a violation of free speech rights and to be compensated for the multiple hearings he had to attend to have the charge thrown out.

“I do find the defendant’s First Amendment rights were violated and defendants do not seem to seriously contest that plaintiff suffered a constitutional violation,” U.S. District Court Judge Cathy Seibel said. “That’s the first prong of the qualified immunity test. I also find that plaintiff’s right not to be arrested for the expression at issue was clearly established.”

The judge allowed Detectives D’Agata and Gorr off the hook because they were only following direct orders. “It would not be reasonable to expect officers to know that an action seemingly endorsed by the district attorney, assistant district attorneys, and a judge was not proper.”

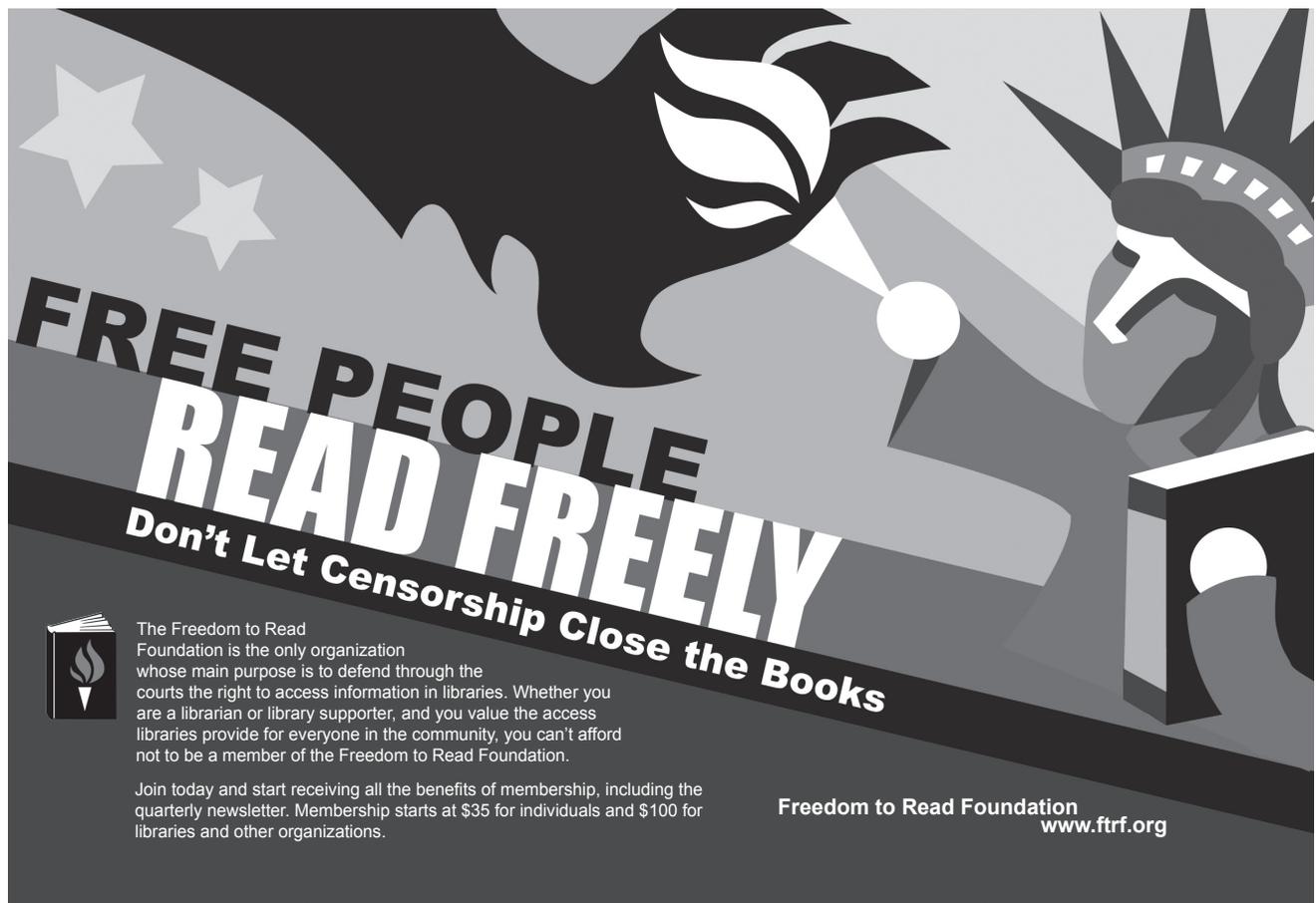
Prosecutors generally have immunity for their decision to charge suspects, but Judge Seibel found that this protection did not apply to the decision to place Barboza under arrest without a warrant.

“Zangala argues that he did not believe there was a constitutional bar to charging plaintiff with a crime. I don’t

quite see how one can at once believe that the First Amendment could be raised as a defense to the charge and at the same time be unaware of any constitutional impediments to bringing the charge. It almost sounds like D’Agata and [District Attorney James R.] Farrell knew the arrest was unconstitutional but were willing to go forward and wait and see if plaintiff would realize it.”

The judge did not have enough evidence on hand to tell whether there was a pattern of constitutional violations under which the town could be held liable. The case will now go to trial so a jury can decide whether the town is liable for failing to instruct its officers not to violate free speech rights.

“I can’t rule out the possibility that a rational juror might conclude that a properly trained officer would have rejected Zangala’s request or at least opened a dialogue that might have avoided plaintiff’s arrest,” Judge Seibel ruled. Reported in: thenewspaper.com, September 17. □



**FREE PEOPLE
READ FREELY**

Don't Let Censorship Close the Books

 The Freedom to Read Foundation is the only organization whose main purpose is to defend through the courts the right to access information in libraries. Whether you are a librarian or library supporter, and you value the access libraries provide for everyone in the community, you can't afford not to be a member of the Freedom to Read Foundation.

Join today and start receiving all the benefits of membership, including the quarterly newsletter. Membership starts at \$35 for individuals and \$100 for libraries and other organizations.

Freedom to Read Foundation
www.ftrf.org

is it legal?



schools

Lewisville, Texas

A month and a half into the new school year, junior Anthony Mazur is immersed in yet another battle with school and district administrators over the copyright and ownership of his photographs.

Mazur, who made national headlines last school year after the school district attempted to stop him from selling pictures of school sporting events to interested parents, is now fighting against another rule by the district. All students in the school's yearbook class now have to sign an agreement that any work they produce as part of the class using district technology "belongs solely to the district."

The Lewisville Independent School District contract says students' images will be "considered 'works made for hire' as the work is specially ordered or commissioned for use as a contribution to a collective work, including but not limited to a school newspaper or yearbook." By signing this form, the contract says, students "release any claim of ownership to images taken of other students with equipment owned by the district." The form is necessary to use district equipment, like school cameras or computers.

Mazur, who has refused to sign the work-for-hire agreement, was denied a school camera to take pictures of the school's pep rally for the yearbook. Instead, he drew pictures in protest, using the hashtag #IAmAnthony, which photojournalists around the country have used to show support for Mazur's ongoing battles.

"That's kind of all I could do, draw pictures since they wouldn't let me use the equipment," he said.

In the beginning, there were one or two other students in the class who were hesitant to sign the contract, Mazur said, but now, he's the only one who is still refusing to sign.

"It's really frustrating," he said. "It's insane. I'm the photo editor of the yearbook and I can't even go take pictures with the [school] camera."

In the spring, Mazur fought his school's order to take down his Flickr gallery of school sports photos all the way up to the school board. The board decided in June to set aside that order—but there was still some confusion about what the district's policy would be going forward. Now, the current situation has raised more questions.

Student Press Law Center attorney advocate Adam Goldstein listed several legal defects of the contract, including the fact that the agreement is coercive and that students already had access to the district equipment because it is paid for by the state of Texas—and so students are not getting anything in exchange for signing away their copyright.

"This is a hugely defective agreement," Goldstein said. "There's no legitimate reason to do this. No other school in the country has felt the need to do this; for decades, we've managed to get through public education without doing this. The only reason I can think anyone would try to do this is the district is having a temper tantrum because they didn't get their way. Well, they're not going to get their way now, so look out for their temper tantrum next year because certainly we're going to help Anthony oppose this, we're going to look for more local counsel to help him oppose this in more formal ways, and I have faith that all the organizations that stepped up before are going to step up again and help Anthony oppose this."

Elizabeth Haas, a spokeswoman for the school district, said that the district believes its expectations are legal. "All students are active participants in the class, whether they sign the form or not," she said. "Students who choose not to sign the form are able to use their personal camera equipment to complete assignments for class."

Haas said this is the first year the school district has utilized this form. She didn't respond to follow-up questions about why the district felt the form was needed.

The form states: "Non-compliance with these school rules may result in: Denial of access to District-owned equipment and/or press credentials except for school specific assignments." Haas bolded the "may" in her email, but Mazur said he was told by school administrators when he went to check out a camera for the school pep rally that he wouldn't be allowed to use the camera because he had not signed the form.

Students will not be transferred from the class if they choose not to sign the form, Haas said.

The school originally told Mazur that he needed to sign the form to complete the class, and Mazur said he and his parents have told the school that they can't "deny me the right to use this equipment to complete the class."

“If the district isn’t going to listen to or answer us, our only option is to get representation and say, this is a letter from a lawyer saying you can’t do this,” Mazur said. Mazur has a camera at home, but he said he doesn’t want to “carry a \$3,000 piece of equipment around school all day.” And besides, “the camera’s not the point,” he said, adding that he’s more concerned with signing over his copyright.

In a post about the situation, he said this could prevent students from having copies of their own pictures and stop them from submitting pictures to photo contests without getting license approval from the school. “They’re making a big problem out of nothing,” he added. Reported in: splc.org, October 2.

student press

Alhambra, California

A new policy governing high school free speech was passed by Alhambra School Board officials October 6, a move that followed months of demonstrations held by student journalists alleging censorship, bullying and a lack of transparency in the district.

The board’s new policy, “Freedom of Speech/Expression, School-Sponsored Publications,” borrowed some clauses from California Education Code 48907, a state law that governs free speech on high school campuses, while still omitting others.

Frank LoMonte, executive director of the Student Press Law Center, a nationwide advocacy organization for student journalists and their advisers, had filed a complaint with the district about the policy, saying it “falls short of the requirements of California law and should be revised to become fully compliant.”

The organization recommended the district revise three components of the policy: First, it said “professional standards” cannot be a prerequisite to publication, but rather an aspirational goal; second, a school official may not dictate the wording of a “disclaimer” if an administrator disagrees with student articles; and third, the policy should recognize statutory prohibition against retaliation of journalism advisers.

The board disregarded the complaint and adopted the policy as is.

California is among ten states, and the District of Columbia, that have enacted laws granting more legal protection against censorship than the bare minimum the U.S. Constitution requires.

Over the past 37 years, state legislators have passed several laws to protect high school and college student journalists working at both public and private institutions. California Education Code 48907, or the California Student Free Expression Law, provides protections for high school

journalists attending public high schools, with added protection against administrative censorship.

The change in Alhambra Unified’s policy coincided with complaints from students at San Gabriel High School, whose student newspaper website, *The Matador*, was shut down recently. In fact, two of three high school newspaper websites in the Alhambra Unified School District were shut down.

Both schools, San Gabriel High and Mark Keppel High, have been at the center of controversy in recent months, which has some students wondering if the move is a veiled form of censorship by the district.

Stacy Chau, a website editor for *The Matador*, said the district called the domain host to shut down the website without allowing students any time to back up their data.

“From what we know so far, we have lost four years of hard work,” she said at the meeting. “To me, this change doesn’t seem as it’s a mere coincidence. It seems that this is a way to put our newspaper under the district’s control.”

Erin Truong, co-editor in chief of *The Matador*, said that Principal Debbie Stone pulled her and co-editor Cassandra Chen out of class the same day the domain expired, to inform the students that the news site would no longer be hosted by outside sources.

Truong said she was told the district “implemented a new policy in which all student publications’ websites will be hosted on the district’s server.”

School Board President Adele Andrade-Statler said she was unaware the websites had been taken down until students spoke about it at the board meeting October 6.

Chau said the students could understand the district wanted to change its policy, but were “baffled” as to why they were informed of the change so late.

Alhambra High School was notified one month ago, Mark Keppel High School was notified three weeks ago and *The Matador* had only one day’s notice, Truong said.

Other students at the meeting also called for the district to reinstate Jennifer Kim, an award-winning student media adviser who was placed on administrative leave in August following a summer of heavy criticism levied against the district and administration by current and former San Gabriel High students and newspaper staff.

Students alleged the move was retaliatory, and demanded answers from the district, which they have yet to receive.

The controversy began in late May, when then San Gabriel High principal Jim Schofield censored *The Matador*’s coverage of the dismissal of a well-liked teacher who was also the speech and debate coach.

“It is tough enough to manage our newspaper without an experienced adviser, but this policy made us feel as if we are being cornered by the district,” Chau said. “It would have been appreciated if we had at least some basic information on when our website would be constructed . . . and told of this policy in advance.” Reported in: *Pasadena Star-News*, October 7.

Pemberton Township, New Jersey

Pemberton Township High School removed Bill Gurden as adviser to the school's newspaper, *The Stinger*, in 2014. Now, Gurden is suing the Pemberton Township Board of Education for violating his civil rights.

In mid-September, Gurden filed a complaint with the Burlington County Superior Court alleging the actions were "taken with maliciousness, intentional desire to cause [him] harm."

The problem originated in 2013, according to the complaint. That December, Principal Ida Smith censored two articles in the student-produced *Stinger* as part of a prior-review policy adopted in 2010, after the publication of an article regarding public displays of affection.

Smith objected to an article about the district athletic director's departure and an opinion piece about the increase in the number of students smoking. According to the complaint, Smith demanded as a condition to publishing the stories that two sentences be removed from the athletic-director article and that the column about smoking be altered to include comments from Smith and to delete a quote from a security guard saying that smoking on campus was worse than the year before.

Following the administration's censorship of the two articles, the student journalists sought to investigate high school newspaper censorship in general, but Smith stopped that article's publication as well, saying it was "inappropriate," the complaint said.

The student journalists had contacted the Student Press Law Center, and the SPLC and the *Burlington County Times* both published articles about the censorship. Smith and district superintendent Michael Gorman met with Gurden and told him to tell the students to stop, which Gurden refused to do, according to the complaint.

Eventually, the *Stinger* was allowed to publish censored versions of all three articles. But before the final article was published in June 2014, Gurden was on his way out as adviser following yet another controversy.

In May, students decided to upload a digital copy of an approved issue of the *Stinger* to Issuu, an online pdf distribution application. Smith had not given explicit permission to distribute the content online.

Gurden received a disciplinary letter. Smith accused Gurden of insubordination. She then removed him from his position as adviser, replacing him with a first-year teacher. She also canceled his journalism courses, citing low enrollment in the classes. Gurden lost \$4,600 a year, the stipend he received as adviser, but remained employed as an English teacher.

For the first time in his career at PTHS, Gurden was not allowed to teach any advanced classes. Gurden has worked at the school since 2006 and is still there.

This past January, Gurden inquired if journalism courses would be restored for the 2015-16 academic year. He was informed that he did not hold the proper certification to

teach journalism, a certification that does not exist in New Jersey.

Gurden, who claims that this has caused him economic and reputational harm as well as emotional suffering, is requesting reinstatement and all equitable back pay and front pay, as well as his disciplinary records to be expunged. Reported in: splc.org, October 9.

university

West Lafayette, Indiana

Purdue University acknowledged that it overreacted when it took down a video of the Pulitzer Prize-winning journalist Barton Gellman's recent presentation on national-security journalism because it contained classified slides released by Edward Snowden.

Gellman wrote in a blog post that the university confirmed it had deleted the video of his presentation after consulting with the Defense Security Service, a division of the U.S. Department of Defense. The episode amounted to "an overreaction while attempting to comply with regulations," wrote the university's assistant vice president for strategic communications, Julie Rosa, to Gellman. She went on: "I'm told we are attempting to recover the video, but I have not heard yet whether that is going to be possible."

At issue were a handful of slides in Gellman's September presentation, part of the university's "Dawn or Doom" colloquium, displaying slides released by Snowden, a former government contractor, that remain classified by the government.

In his post, Gellman referred to a "facility security clearance" that Purdue has to perform classified research for the government, and surmises that the classified slides had violated the terms of the university's agreement with Washington.

Gellman was one of the journalists who first reported on the documents released by Snowden. Reported in: *Chronicle of Higher Education* online, October 8.

intellectual property

Portland, Oregon

When you walk down the aisles of a supermarket and choose between a CokeTM or a PepsiTM, what do those little superscript "TM"s mean to you? Are they corporate marks intended to ward off competitors, or are they instead tiny little imprimaturs of the government's approval of that particular corporate message? Would anyone pick the latter?

Now consider The Slants, an Asian-American band based in Portland. The Slants specialize in "Chinatown dance pop" and have released albums entitled "Slanted Eyes, Slanted Hearts" and "The Yellow Album." Simon Shiao Tam, The Slants' founder and bassist, has explained

that the band selected its name in order to “take on these stereotypes that people have about us, like the slanted eyes, and own them.”

The Slants applied to register their name as a trademark to get the considerable legal and financial benefits that registration provides. The government denied them a trademark based on the Lanham Act, a law that allows the U.S. Patent and Trademark Office (PTO) to deny registration to trademarks that it determines to be “disparag[ing],” or otherwise “offensive” or “immoral” to a “substantial composite” of an affected group. The Slants appealed that decision to the U.S. Court of Appeals for the Federal Circuit, and the ACLU filed an *amicus* brief saying that the band has every right to register its name.

The ACLU’s position is that the First Amendment prevents government from Googling a band, deciding that their private speech is “disparaging,” and then denying them a government benefit on that basis. That’s because the government never has the right to distribute benefits, or not, based on approval or disapproval of someone’s message. That means that the government can’t offer tax breaks only to those who put pro-NAFTA signs in their yards, or only send out the fire department when the person who owns the house on fire voted for the fire chief. The principle also means that government can’t offer a system of immense trademark benefits only to those whose speech isn’t critical or “immoral.” Yet, that’s exactly what the Lanham Act permits. And the ACLU argues that’s unconstitutional.

Taking into account that the band members came up with the name and the concept behind their music, the name “The Slants” as it applies to the band is quite obviously the band’s private speech—and emphatically not a name that expresses a government position. Just like that can of soda.

The government disagrees.

The government’s stance is that trademark registration is government speech, and as a result, the First Amendment doesn’t apply (it only protects private expression from government interference). That’s like saying that when you buy a Pepsi™, the soda is government-sponsored because the brand has a trademark.

The government’s position rests on the Supreme Court’s recent ruling in *Walker v. Sons of Confederate Veterans*. In that case, the court held that Texas’s specialty license plate program, which allowed private groups to submit and fund license plate designs, was “government speech” and thus the state could deny plate designs.

The ACLU argues that *Walker* does not govern this case. The Supreme Court’s narrow decision was based on the fact that license plates have traditionally been used by states to transmit their own messages. For example, Texas issues specialty plates that say “Keep Texas Beautiful” and “Read to Succeed.” Furthermore, license plates are often closely associated with the state, namely because they always carry a state’s name. And, like dollar bills and IDs, the state actually prints and issues license plates.

But those things are not true in the case of trademark registration. The government has not traditionally spoken through registered trademarks, and the public does not generally attribute trademarks to the government. If that were the case, every time we saw a Hershey bar or Kleenex box, the Star-Spangled Banner would ring in our ears. And, trademarks such as “Give Jesus a Chance” and “Everybody Must Get Droned”—if indeed considered government messages—would surely raise more than one eyebrow. While it is true that the government maintains some control over registering trademarks, it can’t be right that by making a list of private speech, the government suddenly gets to claim the speech as its own and thus deny constitutional rights to private speakers.

As this case demonstrates, the government’s position leads to some absurd results. The Slants are Asian-American—the very group that the PTO argues would be disparaged by the band name. They chose their name to reappropriate a racial slur used against their community, in order to remove the power of that term. The band’s response to the government’s position is understandable exasperation: “It was like banging our head against the wall, trying to convince someone that we were not offensive to ourselves.”

In applying a law that is supposedly intended to protect minorities from disparagement, the government has instead denied members of those very communities the trademark benefits they seek. Of course, those are exactly the kinds of absurd results we can expect when we let the government play speech police.

By arbitrarily re-naming private speech as its own, the government is sidestepping its requirements under the First Amendment—particularly, that it cannot allocate benefits based on one’s private speech based on what’s being said. The ACLU believes that, whether we agree with your speech or not, the Constitution protects all our rights to express ourselves equally.

In short, the ACLU contends, the government can’t rewrite the rules of the game—it has to play by them. The Slants, who we think are pretty good with words, put it best:

“This is much bigger than our band. It’s about the principle. This is about doing what is right—not just for us, but for all marginalized communities . . .” Reported in: aclu.org, October 2.

privacy

Washington, D.C.

Employees of the United States Postal Service failed to properly safeguard documents that included the names, addresses and financial information that its law enforcement arm used to monitor the mail of people suspected of criminal activities or for national security purposes, an internal investigation found.

The information, which is collected as part of the Postal Service's mail cover surveillance program, could potentially reveal personally identifiable information and compromise the privacy of the mail, according to the report, which was conducted by the Postal Service's Office of Inspector General and released September 24.

A mail cover is a surveillance tool used by the service to monitor the mail of a person suspected of criminal activity by recording the information on the outside of all letters and packages delivered to a home or business. Law enforcement officials say it is an important investigative tool, but privacy advocates say the practice is ripe for abuse because it does not have judicial oversight and is shrouded in secrecy.

The report follows a similar audit last year that examined the use of mail covers by outside law enforcement agencies.

The most recent report examines the internal use of the program by the Postal Inspection Service, the law enforcement arm of the Postal Service, and found similar problems.

According to the report, the Postal Inspection Service approved 118,577 mail covers requested by its postal inspectors and 39,966 requested by external law enforcement authorities in fiscal years 2010 through 2014.

Auditors said they found numerous problems with the way the agency handled mail covers. According to the report, Postal Service personnel at six of nine postal facilities visited by auditors did not adequately safeguard the collected documents.

For example, at a postal facility in the New York District, a carrier placed a mail cover package, with names, address and other information, on top of his workstation,

where it was accessible to other employees. The information was supposed to be secured.

During a visit to a facility in the Chicago District, auditors found that a form used to record the name and address of the subject of an investigation was posted on a mail carrier's workstation and could be seen by other employees.

Postal Service auditors said managers at the postal facilities failed to "provide adequate oversight to ensure employees followed the procedures."

The problems identified by the inspector general also were not limited to internal mail covers. In one instance, Postal Inspection Service personnel did not notify a requesting law enforcement agency in one of the eleven episodes where the mail cover was compromised. In the other ten episodes, postal managers informed local law enforcement about the breaches and took disciplinary action against employees for publicly disclosing the mail cover.

Although the postal auditor noted that the Post Office has taken steps to address some of the issues it identified in the May 2014 audit, problems persist. The audit found that the agency still had trouble collecting information from the law enforcement agencies that requested mail covers.

The mail cover program has received the attention of privacy advocates and some members of Congress. Senator Thomas R. Carper, Democrat of Delaware, introduced a postal reform bill that would make a number of changes to the program, including providing statistics regarding the mail covers program, which includes the number of external and internal requests, as well as approvals. Reported in: *New York Times*, September 24. □

success stories



schools

Satellite Beach, Florida

A Satellite High School committee made up of educators, a parent and student, has voted unanimously to keep a Pulitzer Prize-winning novel on the shelves – at least for the time being. Cyndi Van Meter, associate superintendent of curriculum and instruction, said she expects the parent who had objected to the book, *Beloved* by Toni Morrison, will appeal the decision—as is his right—to the district.

The parent, Hamilton Boone, admitted not having read the entire book when he addressed the committee in September. Even though the literary classic appears only as an optional summer reading choice for those in Advanced Placement classes, Boone wanted the book banned because of what he called “porn content.”

“The fact that I don’t understand the central theme of it is of no consequence to me nor my wife,” he said. “What is of consequence is that we have a 16-year-old son and there are other 15-year-olds and 16-year-olds, young ladies and young men, that have the opportunity to read a book like this in high school. They have enough going on in their lives trying to sort through what is right and wrong, trying to control the hormones that are just flying.”

Van Meter said Boone should not have been allowed to continue his challenge to the book after admitting he had not read the entire novel.

Last year, Van Meter said there were three book challenges in the district—all on the elementary school level. Two of the books, *The Princess Diaries* and *Across the*

Universe, were deemed too mature for elementary school and moved to middle school curriculum. The third, *Delta Force*, remained. She said the district normally deals with two to three challenges every year.

In *Beloved*, Morrison provides an unflinching look at American slavery and the savage treatment of those who were looked at as merchandise instead of as human beings. The book deals with themes of rape, bestiality and murder.

“Some of the scenes the Boones objected to, were the very scenes that were intended to show the effects of the dehumanization of slavery,” said teacher Joanna DiPeppe, defending the book.

Boone said he found the book to be “completely inappropriate,” and wanted to keep it from all students.

Satellite teacher Tom Jackson, who also served on the committee, said, “If you don’t like it, put it down and read something else,” he said.

One parent who did read it was Lisa Griessler, after she was asked to be part of the “Request for Reconsideration of Materials Committee” at Satellite. The first thing she did was read the passages that Boone objected to and then went back and read the entire book.

“I looked up the definition of pornography,” she said, adding that the definition included writing of no artistic merit in order to cause sexual excitement. “That is not what I felt when I read those passages, especially when I read them in context.”

Perhaps the most poignant defense of the text came from a student on the committee, Maddie Zipperer, who said it is important to get out of our comfort zone at times. “It’s part of America’s legacy,” she said. “It’s dark and it hurts and we need to accept that. We need to be uncomfortable sometimes.” Reported in: *Florida Today*, September 11.

Lumberton Township, New Jersey

A Burlington County school district has returned a popular young adult novel to bookshelves, after the superintendent banned it in response to complaints from a parent.

Looking for Alaska, the first work of author John Green, was questioned for its sexual content during a meeting of the Lumberton Township School Board. Superintendent Joseph Langowski cited policy in pulling the novel from classrooms in the Middle School and ordering a review last week. He later was informed of a second policy, which prompted the book’s return.

“The book is permanently back in classrooms until or unless a parent makes a formal written complaint,” district spokesperson Betsy Kapulskey said. Once the complaint is filed, an official review is conducted by the district and the school board makes the final decision.

The book has been available for about a decade and is in the process of being made into a movie, which Kapulskey suggests is one reason the kids want to read it. It has never

been part of Lumberton's official curriculum. Reported in: CBS Philly, October 16.

Williamson County, Tennessee

The Williamson County School Board voted 7-4 in August to adopt an art history book despite some vocal concern from citizens who said the book was political and too provocative.

The controversial textbook, *Art History: Eighteenth to Twenty First Century*, Third Edition, is to be used in the class Art and the American Identity, a special course which will only be available to seniors who have already taken Advanced Placement (AP) Art History at Independence High School. The class had seven students enrolled.

The board initially discussed the new book at a work meeting on August 13. Board member Candace Emerson began the conversation by noting, "Parents may be concerned with content and the way it is presented. We are a county of excellence and some of this is objectionable to me," Emerson said.

Some of what she found objectionable was listed in a handout that was made available to board members at the meeting. The list included citing the (left-leaning) political affiliations of some artists without, some board members felt, enough evidence. Another complaint was that "selected works of some artists . . . represent very sensitive and sexual images which could be replaced with images by the same artist conveying similar overall messages and style without being gratuitously provocative."

Dan Cash commented, "I don't disagree with the art so much as the innuendos about history and half truths... It's troubling to me that we can't get a history book that puts a positive look on America. Ronald Reagan and Margaret Thatcher aren't even mentioned."

Superintendent Mike Looney explained that the book had received many positive reviews. "The genesis of this recommendation is that a teacher wants to teach a small

class. She wants to use this as a tool. This will not be her only source of information," Looney said. "We are not emotionally tied or committed to any resource."

However, many teachers and parents worried about school board overreach. As one parent commented on Twitter, "What's next? Blocking teachers from the internet so they can't use 'slanted' materials? Can we just let teachers teach?" Others were concerned that students were not being taught critical thinking skills.

Robert Hullet, one of the few defenders on the board, said, "you don't, as a teacher, teach a textbook from cover to cover. If they [the students] are at this level . . . this is what they will be looking at and focused on. We don't want to box our kids in," Hullet added.

A similar sentiment was echoed by Rick Wimberly. "Sometimes it's necessary to stir things up in a classroom, even if those things are controversial," Wimberly said. "It's absolutely imperative that we teach critical thinking skills. We need to help students empower themselves, think for themselves."

There was some concern that the book had not been approved by the state textbook commission, but Looney reminded the board that books for special courses did not need approval from the commission. In addition, the public had time to review the book before it came before the board.

"We set a policy in place," Kenneth Peterson said, "From what we were told there were no issues."

Board member Susan Curlee still seemed to believe that there was a larger moral issue with the textbooks saying, "It doesn't reflect the characteristics of the republic that was created by the constitution. Do we want to spend money on a book that betrays our country through a very slanted lens?" she said.

Nevertheless, board member Mark Gregory seemed to speak for the majority of the board when he said, "I don't think we need to micromanage what teachers teach." Reported in: brentwoodhomepage.com, August 17. □

IN LIBRIS LIBERTAS

A JOURNAL OF INTELLECTUAL FREEDOM AND PRIVACY _ PUBLISHED BY THE OFFICE FOR INTELLECTUAL FREEDOM



Coming
Spring 2016!

intellectual freedom bibliography

Compiled by Kristin Pekoll, Assistant Director, ALA Office for Intellectual Freedom

MacRae, Cathi Dunn. "The First Freedom: The Sad Saga of Freddie Gray?" *VOYA* (August 2015): 49.

Sanneh, Kelefa. "The Hell You Say: The New Battles Over Free Speech are Fierce, But Who Is Censoring Whom?" *The New Yorker* (August 10, 17 2015): 30–34.

Scales, Pat. "Scales on Censorship: Fostering Intellectual Freedom." *School Library Journal* (June 2015): 18.

———. "Scales on Censorship: It's About Choice." *School Library Journal* (August 2015): 12.

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