

FALL 2011 • VOL. 11, NO. 1

# respect

A NEWSLETTER ABOUT LAW AND DIVERSITY

## Offensive Speech and the First Amendment

by Phyllis Raybin Emert

**Former U.S. Supreme Court Justice Felix Frankfurter once said, "It is a fair summary of history to say that the safeguards of liberty have often been forged in controversies involving not very nice people." In the case of *Snyder v. Phelps*, truer words were never spoken.**

The case involved the funeral of Marine Lance Corporal Matthew Snyder of Maryland, who was killed in a Humvee accident in Iraq in 2006. According to court documents, for 30 minutes before the memorial service for Corporal Snyder, seven members of the Westboro Baptist Church (WBC) of Topeka, Kansas, picketed his funeral, holding signs that read: "Thank God for 9/11," "Thank God for Dead Soldiers," "America is Doomed" and "You're Going to Hell."

Albert Snyder, Matthew's father, filed a lawsuit against the Westboro Baptist Church, its founder, Fred Phelps, and his two daughters, Shirley Phelps-Roper and Rebekah Phelps-Davis, who participated in the funeral protest, alleging "intentional infliction of emotional distress, intrusion upon seclusion and civil conspiracy." A lower Maryland court ruled for Snyder and awarded him nearly \$11 million in damages, later reduced to \$5 million. The Fourth Circuit Court of Appeals **reversed** the lower court decision and ruled in favor of Phelps and the WBC, stating that their

actions were protected by the First Amendment. The U.S. Supreme Court **upheld** the Court of Appeals decision.

The First Amendment to the U.S. Constitution states: "Congress shall make no law... abridging the freedom of speech or of the press; or the right of the people peaceably to assemble..." These constitutional rights form the cornerstone of American democracy. In his **majority opinion** for the Court in *Snyder v. Phelps*, Chief Justice John [>continued on page 2](#)

## What's Growing at the USDA? — Discrimination

by Cheryl Baisden

**It might seem as though the biggest hurdle when it comes to suing the government would be proving your claim in court, but for the litigants in the *Pigford v. Glickman* case, winning was easy. It's collecting the settlement money that has proven to be the real challenge.**

Filed in 1997 against the U.S. Department of Agriculture (USDA), the *Pigford* lawsuit charged that the federal government discriminated against African American farmers when it came to making loans to purchase land, livestock, equipment and other operating supplies. In some instances the farmers were directly told they would not be considered for funding, while in others they were forced to meet stricter standards than white farmers and then received much smaller loans. In hearings before Congress, the government acknowledged that a review of the USDA's practices confirmed discrimination had taken place.

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This publication was made possible through funding from the IOLTA Fund of the Bar of New Jersey.

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## Offensive Speech and the First Amendment *continued from page 1*

G. Roberts Jr. wrote, "Debate on public issues should be robust, uninhibited and wide-open, speech on public issues occupies the highest rung of the hierarchy of First Amendment issues."

The Court's decision, however, has provoked many Americans to question whether ugly, offensive, and hurtful speech should be protected and whether the privacy of funerals, especially military funerals, should be shielded from harassment.

### Phelps and the WBC

Defined as a hate group by both the Anti-Defamation League (ADL) and the Southern Poverty Law Center (SPLC), the basic philosophy of Fred Phelps and the WBC is that God is punishing America for its tolerance of gay rights by killing American soldiers.

Founded in 1955, the WBC only has about 70 members, who are almost all related to Phelps in some way. The 82-year-old pastor supports the death penalty for gay individuals because he believes that is what God decreed in the Bible.

Phelps' crusade against gays began in the late 1980s when he made complaints to local government of gay sexual activity in a park located less than a mile from the Phelps family home. When no action was taken, Phelps and the WBC embarked on an all-out campaign against gays. In June 1991, they picketed the park itself, then businesses that employed gay people, then funerals of gay men.

They expanded their protests to the national scene, picketing and heckling people at the 1993 gay rights march in Washington D.C. The WBC then expanded its intense **homophobia** to include the military, protesting at funerals of soldiers killed in Iraq and Afghanistan. One inflammatory flier distributed by the WBC

reads: "They turned America over to fags. They're bringing them home in body bags." It is important to note that, as in the case of Matthew Snyder, these soldiers were not necessarily gay. The WBC has such an extreme hatred of gays that it links every perceived wrong in America to the gay rights issue.

### Both sides weigh in

The attorneys general of 48 states and the District of Columbia, along with 42 U.S. senators and veterans groups, sided with Snyder, asking the Court in a friend of the court brief to shield

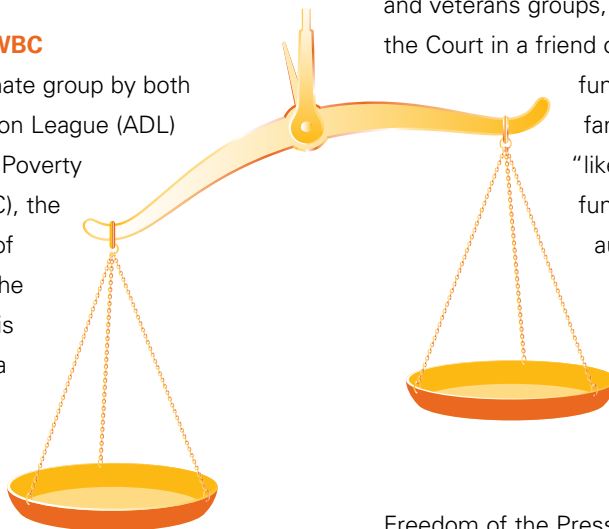
funerals from the Phelps family, claiming "like the residents of a home, funeral attendees are a captive audience" to the Phelps' message, and called them "emotional terrorists."

While distancing themselves from the church's message, the Reporters Committee for Freedom of the Press filed a brief on behalf of 21 news organizations, urging the Court to side with the Phelps family.

"Most reasonable people would consider the funeral protests conducted by members of the Westboro Baptist Church to be inexplicable and hateful," their brief stated. "But to silence a fringe messenger because of the distastefulness of the message is **antithetical** to the First Amendment's most basic precepts."

### Supreme Court decision

Oral arguments in the *Snyder v. Phelps* case took place on October 6, 2010 and the Court rendered its 8-1 decision on March 2, 2011 in favor of Phelps. The question presented was whether the church members were liable for millions of dollars in damages for protesting at the military funeral of Matthew Snyder, or whether the First Amendment guarantee of free speech protected them from liability. In order to side with Snyder's father, the Court would have had to create *>continued on page 3*



an exception to free speech for funerals or in particular military funerals. There are currently only six recognized exceptions to the free speech rule (obscenity, defamation, breach of peace, incitement to crime, “fighting words” and **sedition**).

“Speech is powerful.” Chief Justice Roberts wrote in the Court’s majority opinion. “It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—inflict great pain. On the facts before us, we cannot react to

that pain by punishing the speaker. As a nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”

During oral arguments, Justice Ruth Bader Ginsburg asked Margie Phelps (Fred’s daughter), who argued the case for Westboro, “This case is about exploiting a private family’s grief. Why should the First Amendment tolerate exploiting this Marine’s family when you have so many

other forums for getting across your message?”

“The principle of law, as I understand it, is without regard to viewpoint,” Phelps answered. “There are some limits on what public places you can go to deliver words as part of a public debate. If you stay within those bounds, this notion of exploiting has no definition in a principle of law.”

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## States Attempt to Curb Funeral Protests

*While the First Amendment guarantees freedom of speech, some legislators would like to see limits set when it comes to military funerals. In response to the Westboro protests at military funerals, in 2006 President George W. Bush signed the Respect for America’s Fallen Heroes Act into law. The law prohibits picketing within 300 feet of a national cemetery entrance, and within 150 feet of a road leading into the cemetery, and restricts protests to one hour before and one hour after a funeral. Violators can be fined up to \$100,000 and sentenced to a year in prison.*

*A new bill, introduced in April 2011 by Senator Olympia Snowe of Maine, attempts to narrow the scope of the 2006 federal legislation. If signed into law, the Sanctity of Eternal Rest for Veterans Act would increase the quiet time before and after military funeral services from one hour to two hours; increase from 150 feet to 300 feet the buffer around a military funeral service and increase from 300 feet to 500 feet the buffer around access routes to a funeral service area. The bill would also increase civil penalties on violators. The legislation was referred to the Committee on Veterans’ Affairs.*

### Variations in state laws

*In 2006, many states began to pass laws similar to the federal legislation. Currently, 44 states, including New Jersey, have laws on the books regulating funeral protests. New Jersey’s law restricts protests to within 500 feet of funerals.*

*Some of these state laws, however, when challenged in court on their constitutionality by Phelps and the American Civil Liberties Union (ACLU) did not withstand legal scrutiny. A federal judge in Kentucky ruled that a law banning*

*protests was too broad. The law was then rewritten to deal with challenged provisions and the federal district court declared the case resolved. Another federal judge in Missouri ruled in 2010 that a state ban on protests was unconstitutional. The most recent trend in state legislation is to list distance and time restrictions on picketing, as well as penalties such as fines and jail time. Some state legislation, however, may still be too broad to avoid constitutional challenges.*

### Enduring constitutional challenges

*In a Valparaiso University Law Review article, law student Kara Beil noted there is a “lack of uniformity” among the state bans on funeral picketing and expressed a “need for a model statute” that could satisfy constitutional challenges.*

*“In order for state funeral protest bans to survive constitutional challenges, they must be content-neutral,” Biel wrote and noted that the laws should not “discriminate against or target specific speech...content-neutrality is key to any model statute...”*

*Professor Frank Askin, director of the Constitutional Litigation Clinic at Rutgers Law School—Newark, predicted that “in future cases, reasonable regulations governing funeral protests will likely be upheld by the courts.” Professor Askin commented, “Snyder v. Phelps was a relatively easy case under the First Amendment. The picketers were expressing views on issues of public concern, and they were picketing a thousand feet away from the funeral, pursuant to rules approved in advance by the police.”*

—Phyllis Raybin Emert



## Offensive Speech and the First Amendment *continued from page 3*

In his opinion, Chief Justice Roberts wrote, “the church had notified the authorities in advance of its intent to picket at the time of the funeral, and the picketers complied with police instructions in staging their demonstration.” The protest occurred on public land, 1,000 feet from the church where the funeral was held. The picketers were behind a temporary fence and separated from the church by several buildings. “The Westboro picketers displayed their signs for about 30 minutes before the funeral began and sang hymns and recited Bible verses,” wrote Chief Justice Roberts. “They did not yell or use profanity, and there was no violence associated with the picketing.”

The funeral procession passed within a few hundred feet of the picketers, but Albert Snyder admitted he could only see the tops of the offensive signs. He saw what was written on them during a TV broadcast later that night.

### Public or private concern

Chief Justice Roberts explained that the liability of Phelps and the WBC depended upon “whether that speech is of public or private concern” because speech relating to

issues of public concern “is at the heart of the First Amendment’s protection.” It doesn’t matter whether the speech is “inappropriate or controversial” as long as it is “a matter of public concern.”

Issues of private concern about particular individuals are not afforded as much First Amendment protections. The court evaluates the content of the speech to determine whether it “relates to broad issues of interest to society at large, rather than matters of ‘purely private concern.’” Chief Justice Roberts declared in his written decision that the messages on the signs, despite being nasty and offensive, do relate to public issues, such as “the political and moral conduct of the United States and its citizens, the fate of our Nation...[and]... homosexuality in the military.”

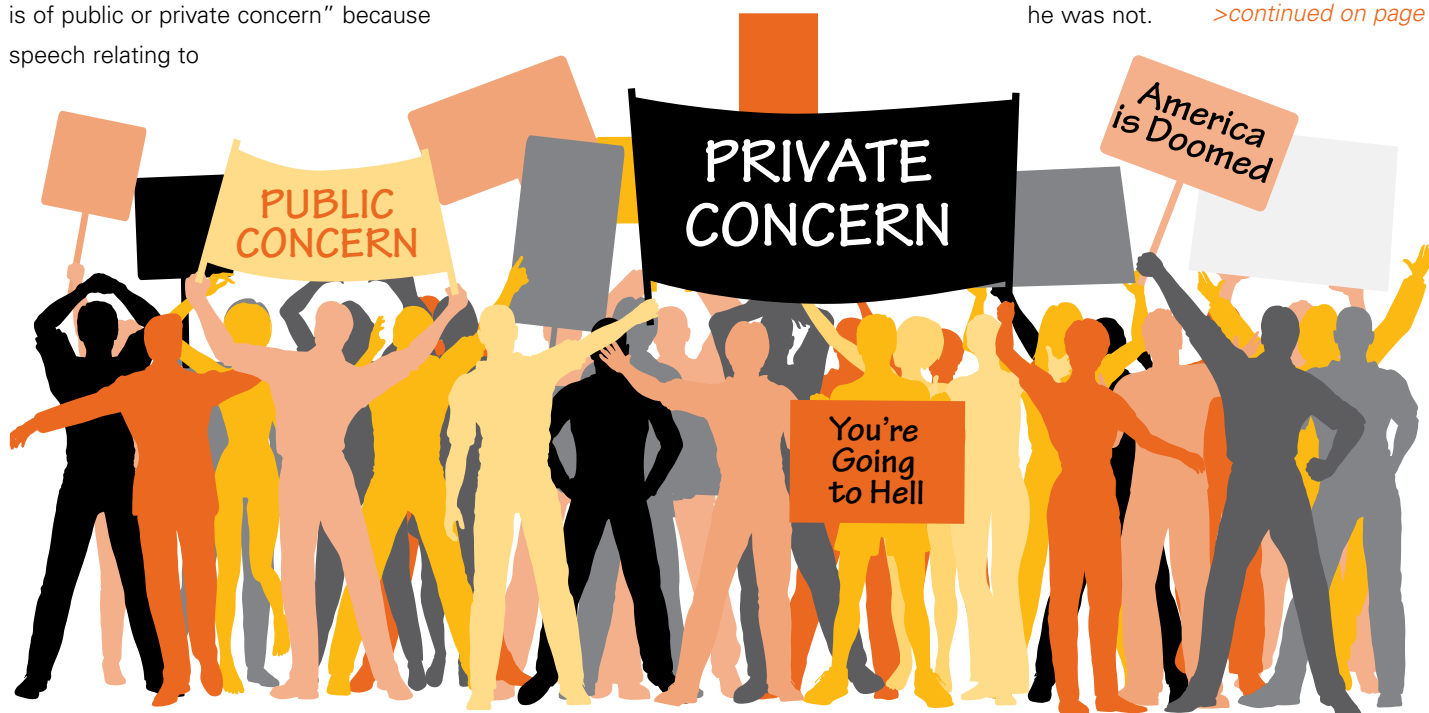
Albert Snyder believed the messages displayed on the signs during the protest were “a matter of private rather than public concern” because of “its connection with his son’s funeral.” However, the Court found that “the overall thrust and dominant theme of Westboro’s demonstration spoke to broader public

issues.” Despite the fact that the protest and signs were “particularly hurtful,” the picketing was quiet and peaceful in a public area. Chief Justice Roberts concluded that “the church members had the right to be where they were... Such speech cannot be restricted simply because it is upsetting or arouses contempt...If there is a bedrock principle underlying the First Amendment,” the chief justice wrote, “it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”

### Lone dissenter

In his **dissenting opinion**, Justice Samuel Alito wrote, “Our profound national commitment to free and open debate is not a license for the vicious verbal assault that occurred in this case...The Court...holds that the First Amendment protected respondents’ [WBC] right to brutalize Mr. Snyder. I cannot agree.”

In his dissent, Justice Alito noted that Phelps and the WBC suggested by their signs that Matthew was gay, which he was not. *>continued on page 8*



## What's Growing at the USDA? – Discrimination *continued from page 1*

In fact, a study commissioned by the USDA itself confirmed that for years African American farmers complained they were treated unfairly by regional agencies that handled federal farm loans, and that their complaints of discrimination went unanswered. Among the significant findings, the study noted that between 1990 and 1995, loans, when they were granted to African American farmers, were 75 percent lower than those provided to white farmers.

“Good people lost their farmland not because of bad weather, bad crops, but because of the color of their skin,” Agriculture Secretary Dan Glickman confirmed when testifying before Congress in 1997.

After carefully analyzing the facts in the case, the government agreed to settle out of court in 1999. But today, a dozen years later, thousands of African American farmers have still not received payments. As a result, many have lost or are on the brink of losing their farms.

### A class action

Hoping to change the USDA's discriminatory practices and obtain compensation for their losses, Timothy Pigford and about 400 other African American farmers filed a lawsuit in 1997. After reviewing the complaint, the case was certified as a class action matter by the U.S. Supreme Court, which means that the Court found the individual farmers had the same experience and could sue as a “class” in one lawsuit, according to Cherry Hill attorney James J. Ferrelli, whose practice includes class action cases. Class action certification allows people who might not be able to afford to file a lawsuit on their own the opportunity to pursue legal action as part of a group. If a class action case is successful, settlements are distributed among the

litigants, and others who file claims as part of the class within a certain timeframe, Ferrelli explained.

Since the federal government had already acknowledged the discriminatory practices, rather than try the *Pigford* case in court the two sides negotiated a settlement, which the U.S. Supreme Court then approved. Under the agreement, an eligible African American farmer must have applied for USDA funding between



1981 and 1996, had to believe he or she was discriminated against in the process, and had to have made a complaint against the USDA by July 1, 1997. The Court set the deadline for filing as a member of the class as October 12, 1999.

About 15,000 African American farmers received settlements totaling approximately \$900 million following the ruling, but nearly 74,000 additional farmers filed claims after the deadline, charging they were not notified properly about the class action suit and the opportunity to file a claim, were given erroneous information about the process, or had their applications improperly denied. In 2008, under a measure sponsored by then Senator Barack Obama, Congress set aside \$100 million through the Farm Bill to address these late claims, known as *Pigford II*. But as more and more farmers

filed under *Pigford II*, it became clear that additional funding would be needed. As a result, the Obama administration requested another \$1.15 billion be made available. Although Congress approved the settlement, and the government announced the \$1.25 billion *Pigford II* agreement in February 2010, lawmakers have still not approved the additional funding itself, and final court approval has not been granted.

“The government announced the settlement like it was all over... Right now it's planting time, and we thought we would have the funds in time for this season,” John Boyd, an African American farmer from Virginia who founded the National Black Farmers Association, which spearheaded the *Pigford* lawsuit, told *The Washington Post* in the spring of 2010.

### Latest chapter

In September 2011, the latest chapter of the *Pigford* story unfolded, as the U.S. federal district judge who has been overseeing the matter held a hearing to grant final approval on *Pigford II* and to establish how the late claims would be processed. Once Judge Paul Friedman's ruling is announced, farmers will have 180 days to submit their claims and an independent review panel will evaluate each one. If funding is in place by the time all claims are reviewed, settlement checks could be distributed in late 2012 or early 2013, according to the court's timetable.

In the meantime, the continued delay has left class action petitioners like 78-year-old Harvey White wondering how much longer they can hold on. A soybean and cotton farmer in Mississippi, White told *The New York Times* that he was turned down for USDA loans every year from 1967 to 1986, and hoped to use any settlement money to repay money he borrowed to keep his farm and

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# Ohio Man Convicted in Holocaust Trial

by Jodi L. Miller

**In the spring 2011 edition of *Respect*, we reported on John Ivan Demjanjuk (pronounced dem-ahn-yuke), a Ukrainian native who emigrated to the U.S. in 1952 with his wife and infant daughter, eventually settling in a suburb of Cleveland and becoming a U.S. citizen. Demjanjuk stood accused in Germany for his part as a recruited S.S. guard at the Sobibor death camp in Nazi-occupied Poland in 1943. On May 12, 2011, after an 18-month trial, a German court convicted the 91-year-old Demjanjuk on more than 28,000 counts of accessory to murder. He was sentenced to five years in prison.**

According to Associated Press Reports, Ralph Alt, the presiding judge in the case said, "The court is convinced that the defendant served as a guard at Sobibor from March 27, 1943 to mid-September 1943" and called Demjanjuk "a piece of the Nazis' machinery of destruction."

## **Jewish organizations were delighted with the verdict.**

"John Demjanjuk's Nazi past finally caught up with him. For decades he skirted justice, living a normal life with his family in the United States, successfully covering up his past as a guard at the notorious Sobibor death camp, where 250,000 Jews were murdered," Rabbi Marvin Hier, founder and dean of the Simon Wiesenthal Center, said in a press statement. "Today, a German court finally put an end to his disguise and set the record straight that he was, in fact, one of the sadistic and brutal murderers at

Sobibor and sentenced him to, what for a 91-year-old man, is a life sentence in jail."

Avner Shalev, head of the Yad Vashem Holocaust Remembrance Authority in Jerusalem, told *The New York Times*, "no trial can bring back those that were murdered," but said Demjanjuk's conviction showed there is "no statute of limitations on the crimes of the Holocaust and the killings could not have taken place without the participation of myriads of Europeans on many levels."

In a press statement, Elan Steinberg, vice president of the American Gathering of Holocaust Survivors and Their Descendants, called the conviction "a clarion pronouncement that the pursuit of justice should know no barriers of time and geography."

Efraim Zuroff of the Simon Wiesenthal Center, who is a devoted Nazi-hunter, said the decision, "sends a very strong message that even many years after the crimes of the Holocaust, perpetrators can be held to account for their misdeeds." Zuroff told *The Los Angeles Times*, "We are hopeful that this verdict will pave the way for additional prosecutions in Germany."

Since Demjanjuk was such a low-level ranking officer, because of the court's decision other low-ranking Nazi helpers could face prosecution, according to Thomas Walther, lead investigator in the Demjanjuk case. Walther told *The Los Angeles Times*, "It could be very soon that more are brought to the table. This case is a door-opener."

## Braunsteiner—First Nazi War Criminal Extradited from United States

*John Demjanjuk may be the latest Nazi war criminal to be extradited to Germany from the United States, but he is not the first. That distinction goes to Hermine Braunsteiner, who was extradited to Germany in August 1973, after Nazi hunter Simon Wiesenthal led authorities to where she was residing in Queens, New York.*

*An SS guard at the Ravensbrueck and Majdanek concentration camps, Braunsteiner was known for her brutality and was branded with the name "the mare" for the way she viciously kicked prisoners with her iron-tipped boots. After the war, Braunsteiner served two prison terms in Austria for her mistreatment of inmates at Ravensbrueck. She was released in 1950.*

*Braunsteiner, who married Russell Ryan, an American she met while he was vacationing in Austria, would become a U.S. citizen in January 1963. After Simon Wiesenthal tipped off The New York Times to the possible whereabouts of Braunsteiner, the newspaper dispatched a reporter, Joseph Lelyveld, to find*

*her. Lelyveld would later write that when she opened the door Braunsteiner Ryan's first words were: "My God, I knew this would happen. You've come."*

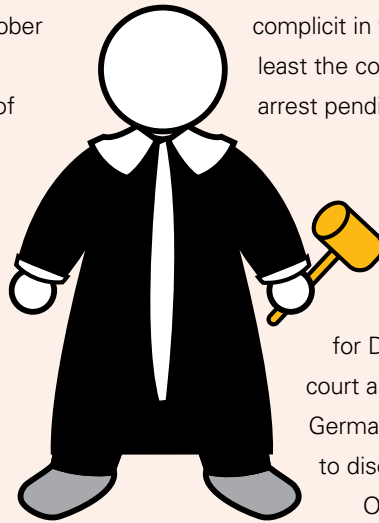
*U.S. authorities began denaturalization proceedings in August 1968. After many delays, her citizenship was revoked in 1971 on the basis that she failed to disclose her convictions for war crimes in Austria. The German government requested her extradition in 1973 so that she could stand trial for her crimes at the Majdanek concentration camp.*

*According to The New York Times, during her trial in West Germany, witnesses who gave testimony told of "her whipping women to death, seizing children by the hair and throwing them on trucks to take them to the gas chamber."*

*In the end, Braunsteiner Ryan would be convicted of just two murders. She was sentenced to life in prison, but was released in 1996 due to her poor health and died in 1999.*

— Jodi L. Miller

In fact, the Associated Press reported in October 2011 that German prosecutors are reopening “hundreds of previously dormant investigations of former Nazi death camp guards who might now be charged” depending on the outcome of Demjanjuk’s appeal. Kurt Schrimm, who heads up the prosecutor’s office in Germany that investigates Nazi crimes, told the Associated Press that he is “looking into other possible suspects who could still be alive and prosecuted once the appeal is heard.”



complicit in the mass murder of over 28,000.” Rabbi Hier felt the least the court could have done is kept Demjanjuk under house arrest pending his appeal.

### Final chapter?

One would think the decision in this case (pending appeal) would be the end of this chapter in history. In July 2011, however, public defenders for Demjanjuk filed a motion in a Cleveland U.S. district court asking that rulings leading to his 2009 deportation to Germany be set aside due to the failure of the government to disclose evidence during the legal proceedings.

### Convicted and released

Germany does not allow consecutive sentences to be served for multiple counts of the same crime. So, Demjanjuk could only have been sentenced to a maximum of 15 years for his crimes.

The prosecution had asked that he be sentenced to six years, taking into account Demjanjuk’s age and the time he had already served in Israel when he was convicted of being Ivan the Terrible. That conviction was later **overturned**. After being sentenced to five years for his role at Sobibor, the judge released Demjanjuk pending his appeal due to his advanced age.

“Keeping him confined would be disproportionate,” Judge Alt said. “The sentence can only begin once any appeal in the case is rejected.”

The prosecutors in the case initially objected to his release but withdrew that objection admitting that Demjanjuk did not pose a flight risk since he is living in a Bavarian nursing home. The appeal could take as long as two years. With Demjanjuk’s failing health, he will likely serve very little or none of his sentence.

There was outrage among Jewish organizations after news of Demjanjuk’s release. Rabbi Hier said, “This is an insult to his victims and to the survivors, that after all of this they may see John Demjanjuk strolling in the park in Germany for having been

One piece of evidence in particular is a 1985 FBI report uncovered by the Associated Press that questioned the validity of Demjanjuk’s S.S. identity card. This card was crucial to the prosecution’s case. While the U.S. Department of Justice’s Office of Special Investigations claimed the card to be genuine, a report from the FBI’s Cleveland field office concluded, “justice is ill-served in the prosecution of an American citizen on evidence which is not only normally inadmissible in a court of law, but based on evidence and allegations quite likely fabricated by the KGB.”

In press reports, Demjanjuk’s son, John Jr., who was born in the United States and believes in his father’s innocence, has said, “As an American, it is appalling to me that the exact same Justice Department division which was found to have committed fraud on the court in the Demjanjuk case does not want the FBI report matter to be fully investigated now that it appears they have cheated my father and the U.S. judiciary again—in the very proceedings that were investigating their prior fraud.”

Demjanjuk’s attorneys have always maintained that the identity card was forged and were not aware of this report until the Associated Press brought it to light in April 2011. As a result, a district court judge in Cleveland appointed a public defender to represent Demjanjuk in his appeal. Some legal experts indicate that this evidence could garner Demjanjuk a new trial. ■

## What’s Growing at the USDA? – Discrimination *continued from page 5*

family going. Any additional money, he said, would go to buying a car with air conditioning to take his wife to her dialysis appointments three times a week.

“I am glad Congress has given us an opportunity to redo this, but they provided not nearly enough money,” Judge Friedman acknowledged after the hearing. “This settlement will not be perfect. It will not cure everyone’s problems with the

USDA. It will not by itself cause systemic change at the USDA but has and will have impact on the USDA’s policies and programs.”

### Just the tip of the iceberg

Even if the federal government finally fully funds the remaining *Pigford* claims, more farm loan discrimination challenges remain. In 1999, Native American farmers

filed their own class action suit claiming USDA loan discrimination, and in April 2011 a U.S. District Court judge ruled the claimants, who have until December 24 to file, are entitled to share \$680 million in damages. Still working its way through the legal system is a similar USDA discrimination lawsuit filed in 2000 by Hispanic farmers. ■

## Offensive Speech and the First Amendment *continued from page 4*

Several weeks after the funeral, a very personal attack against Matthew's parents and against "satanic" Catholicism was posted on the WBC's website. Justice Alito claimed that Phelps' tirade on the Internet was a personal and private attack on the Snyders and Phelps should be liable for damages. "This is the strategy that they have routinely employed - and that they will now continue to employ," Justice Alito wrote, "inflicting severe and lasting emotional injury on an ever growing list of innocent victims."

Snyder, however, never included this website rant in his petition to the U.S. Supreme Court, only referring to the protest at his son's funeral. The Court, therefore, decided not to consider the attack on the Internet in its decision.

Justice Alito wrote that Phelps and the WBC's "outrageous conduct" caused the Snyders "great injury" and the U.S. Supreme Court "now compounds that injury by depriving petitioner [Snyder] of a judgment that acknowledges the wrong he suffered." Justice Alito concluded, "In order to have a society in which public issues can be openly and vigorously debated, it is not necessary to allow the brutalization of innocent victims..."

### Reactions to the decision

Understandably upset after the ruling, Albert Snyder was quoted in *Time*, saying, "Now Westboro can pretty much do and say and act however they want. And there's not a damn thing anybody can do." And to *The Washington Post*, Snyder said, "My first thought was eight justices don't have the common sense God gave a goat... We found out today we can no longer bury our dead in this country with dignity."

Neil Richards, a constitutional law expert and professor at Washington University in

St. Louis, said in a statement put out by the university, "The Court held that the church's rather distasteful message—that God hates America and is punishing it for its tolerance of homosexuality, particularly in the armed forces—was principally a commentary on public affairs rather than a private act of harassment against the Snyder family." Richards, who is also a former law clerk of former Chief Justice William H. Rehnquist, noted, "This is consistent with the broad theme of modern First Amendment law that speech on matters of public concern is entitled to very strong protection and cannot be regulated or made the subject of civil liability even when it is both offensive to many and causes significant harm."

Jimmie Foster, the national commander of The American Legion, who also filed a friend of the court brief on behalf of Snyder, told the *New Jersey Law Journal*, "While we understand the Supreme Court's ruling and we appreciate the sanctity of freedom of speech, we are very disappointed that any American would believe it appropriate to express such sentiments as those expressed by the Westboro Baptist Church, especially at the funeral of an American hero who died defending the very freedoms this church abuses."

Unfortunately, free speech is not always free. Sometimes there is a price to be paid and that price is allowing speech we don't like to be heard so that all speech is protected. Former U.S. Supreme Court Justice Oliver Wendell Holmes said, "If there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought, not free thought for those who agree with us but freedom for the thought that we hate." ■



## Glossary

**antithetical** — opposing or contrary; in direct contrast to an idea. **dissenting opinion** — a statement written by a judge or justice that disagrees with the opinion reached by the majority of his or her colleagues. **extradite** — to deliver an accused person or prisoner to another state or nation for prosecution. **homophobia** — an irrational fear of homosexuals. **majority opinion** — a statement written by a judge or justice that reflects the opinion reached by the majority of his or her colleagues. **overturned** — in the law, to void a prior legal precedent. **reverse** — to void or change a decision by a lower court. **sedition** — the act of resistance to or a revolt against lawful authority. **upheld** — supported; kept the same.