

respect

A NEWSLETTER ABOUT LAW AND DIVERSITY

Standing Your Ground or License to Shoot First and Ask Questions Later?

by Phyllis Raybin Emert

In the United States, citizens have always had the right to protect themselves from harm. Self-defense laws have been in existence for hundreds of years to protect those who have justifiably killed someone for fear that they themselves would be killed.

Last year in Florida, the killing of Trayvon Martin, an unarmed African American teenager, shed light on laws that take self-defense one step further. Stand your ground laws allow the use of deadly force to protect people or property from harm with no repercussions or liability to the aggressor. In 2005, Florida was the first state to pass a stand your ground law. By 2012, more than 20 states would follow suit

While New Jersey does not have a stand your ground law on its books, it does address the use of force in self-protection. New Jersey's statute states: "The use of force upon or toward another person is justifiable when the actor reasonably believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion..."

The New Jersey law also addresses what is known as the "duty to retreat" by stating: "The use of force is not justifiable [when] the actor knows that he can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a thing to a

person asserting a claim or right thereto or by complying with a demand that he abstain from any action which he has no duty to take, except that the actor is not obliged to retreat from his dwelling, unless he was the initial aggressor..."

With stand your ground laws, there is no duty to retreat for the assailant. In other words, if the aggressor could remove him or herself from the perceived dangerous situation and avoid *>continued on page 4*

Filter Flaw: Schools Act to Remove Biased Blocks on Internet

by Barbara Sheehan

When you surf the Internet using your school's computer, you have access to a world of information. Almost.

A federal law, enacted in 2000, called the Children's Internet Protection Act (CIPA), requires schools to maintain an Internet safety policy in order to qualify for technology discounts. In accordance with this federal act, schools must install protection measures to block Internet access to pictures that are obscene, child pornography, or harmful to minors.

In recent years, a kink in the system was brought to the attention of many schools, including some here in New Jersey. In addition to blocking the "bad" stuff, a number of school Internet filters were also blocking access to pro-LGBT (lesbian, gay, bisexual and transgender) websites that students and teachers alike wanted to access for resource and informational purposes.

Biased blocks?

Eileen Bosco, a music teacher and advisor of the Gay-Straight Alliance Club at New Jersey's Vineland High School, said she first noticed the problem when trying to *>continued on page 7*

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National Security v. Individual Rights— Is Spying by Police Okay?

by Jodi L. Miller

After terrorists attacked our country on September 11, 2001, then-president George W. Bush declared a war on terror. More than a decade later, many Americans question how far we should go in protecting our nation's security and whether it is just to target certain groups for extra surveillance.

This became a concern around the country and in our region particularly, when members of the New York Police Department (NYPD) were accused last year of improperly singling out Muslim groups in New Jersey for surveillance. That surveillance has reportedly ended; however, concerns about its impact are still being debated.

It is well established that Muslim extremists were responsible for the 9/11 attacks and for a number of other terrorist plots as well. It is also widely recognized, however, that those extremists represent a small minority of Muslims. Knowing that, is it right to treat Muslims differently simply because of their religion?

One vocal opponent of the NYPD's Muslim surveillance in New Jersey is Dr. Aref Assaf, president and founder of American Arab Forum, a non-partisan organization that promotes positive images of the Arab American community.

"We are American citizens and we care about this country," said Dr. Assaf, who is a member of the New Jersey Governor's Ethnic Advisory Council. He emphasized that American Muslims are law-abiding citizens and should not be blamed for the actions of fellow Muslims thousands of miles away.

Dr. Assaf contends that Muslims are the "first ones" who want to see an end to terrorist activity, and members of the Muslim community stand ready to work with law enforcement in this cause. But the way the NYPD conducted Muslim surveillance in New Jersey, which critics contend was done without

any evidence of a terroristic threat, was wrong, Dr. Assaf says.

Surveillance has "chilling effect"

According to a Pulitzer Prize-winning series of articles published in 2011 by the Associated Press, since 2002, the NYPD had been sending undercover agents into a number of New Jersey establishments frequented by Muslims, including mosques, cafes, businesses and college campus facilities where Muslim student groups meet, to spy on members of the Muslim community. The NYPD's secret

Demographics Unit (now re-named the Zone Assessment Unit) reportedly conducted this surveillance program with training and guidance from the Central Intelligence Agency (CIA)—an agency that is supposed to be prohibited from spying on Americans, the series pointed out.

"The New York Police Department is doing everything it can to make sure there's not another 9/11 here and that more innocent New Yorkers are not killed by terrorists," NYPD spokesman Paul Browne told the Associated Press. "And we have nothing to apologize for in that regard."

The NYPD has gotten in hot water before over its surveillance tactics. In the late 1960s, its surveillance of students, civil rights groups and suspected Communist sympathizers resulted in a lawsuit known as the *Handschu* case. According to the Associated Press, as a result of that case, federal guidelines were put in place "prohibiting the NYPD from collecting information about political speech unless it is related to potential terrorism."

The NYPD's current undercover operation has been criticized for being misguided and having a "chilling effect" on local businesses and organizations. In other words, as Dr. Assaf explained, many people in the Muslim



community are afraid to participate in the activities they used to enjoy because of their fear of being targeted by police.

Additionally, critics point out and the Associated Press reported that the surveillance resulted in no terrorism leads, which they contend is further evidence that the spying was unnecessary and unfounded.

Ironically, CBS News reported that some Muslims have no problem with increased NYPD surveillance in their neighborhoods and held a rally in support of the NYPD last year. A Muslim high school student attending the rally, who at the time was a senior at a Catholic school in Staten Island, said he would not mind if his mosque were under NYPD surveillance. "I have nothing to hide. I love my country and I really have nothing to hide from the NYPD," he said.

Not everyone is so understanding with regard to the NYPD's tactics. Jethro Eisenstein, an attorney on the *Handschu* case, told the Associated Press, "This is a terribly **pernicious** set of policies. No other group since the Japanese Americans in World War II has been subjected to this kind of widespread public policy."

No laws broken

Concerns expressed by the Muslim community sparked outcry in 2012 from New Jersey Governor Chris Christie, who challenged the NYPD's presence in the Garden State. A later investigation into this matter by the New Jersey Attorney General, however, found that the NYPD broke no laws in its surveillance. Since the controversy, the NYPD announced that it stopped the controversial surveillance in New Jersey.

In May 2012, Assemblyman Charles Mainor introduced a bill in the New Jersey Assembly that would require out-of-state law enforcement to notify New Jersey officials if they plan on conducting surveillance in the state. The bill would also allow prosecutors to obtain an injunction to block an

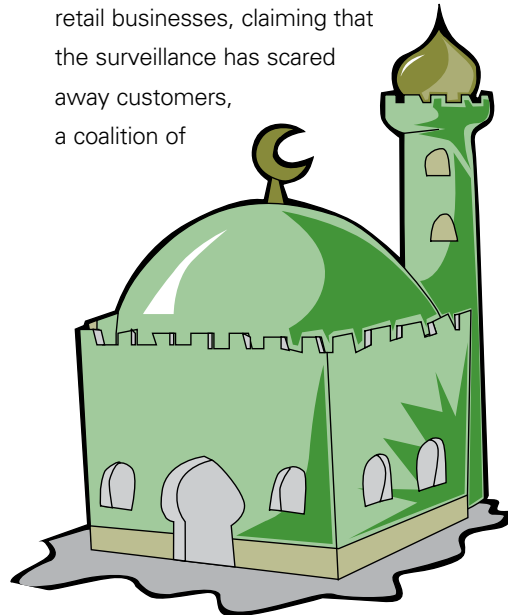
agency from conducting surveillance if it hasn't complied with the notification requirements.

Assemblyman Mainor drew on his experience as a Jersey City police detective when he spoke before the state's Homeland Security and State Preparedness Committee. "As a law enforcement officer, I can appreciate the importance of a surveillance operation, but not when conducted in secrecy and potentially in violation of the civil rights of our residents. If an out-of-state law enforcement agency finds it necessary to conduct surveillance in our state, then they must inform our law enforcement officials about it and justify the need for it, so our residents are protected from what, many who followed the NYPD surveillance debacle, felt amounted to racial and religious profiling."

At press time, the bill had passed easily in the New Jersey Assembly by a vote of 76-3 and was awaiting consideration by the state Senate.

'Unprecedented' lawsuit

Although the unwelcome NYPD police presence has reportedly ended, a number of organizations and individuals who claim they were harmed by the earlier police activity are moving forward with a lawsuit, *Hassan v. City of New York*, filed against the City of New York in June 2012. Among the numerous **plaintiffs** are retail businesses, claiming that the surveillance has scared away customers, a coalition of



New Jersey mosques, Muslim student associations at Rutgers University, and the proprietors of a school for Muslim girls.

Also a plaintiff is U.S. Army Reserve soldier Syed Farhaj Hassan (for whom the case is named), an Iraq war veteran who has received honors for his military service. According to court documents, Hassan, who still works with the Army's 304th Civil Affairs Brigade, feared that his career would be jeopardized by his attendance at a mosque in Somerset that had been under NYPD surveillance.

He told *The Huffington Post*, "I stopped going to a mosque because I was in fear that my security clearance would be in danger." As for his participation in the lawsuit, Hassan said it was not only motivated by religious reasons. "This is for everybody, this isn't just for Muslim Americans. This is for all Americans," he told *The Huffington Post*. "This is just another way of my personal little bit to defend the Constitution."

Ravinder S. Bhalla, a Jersey City attorney who is one of the attorneys involved in the case, called the lawsuit unprecedented.

"Today, American Muslims and their families are the focus of unjust suspicion. They fear that an undercover cop might be looking over their shoulder while they pray, monitoring conversations of their children in college, or eavesdropping on their conversations at their place of business," Bhalla said. "These activities are an **egregious** violation of the constitutional rights of equal protection under the law and freedom of religion and they have not provided law enforcement with a single lead."

Deja vu?

Although the *Hassan* case raises some unique questions, concerns about the constitutionality of police surveillance are not new, notes Frank Askin, professor of law and director of the Constitutional Litigation Clinic at Rutgers School of Law-Newark.

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killing someone, he or she is not obliged to do so under the stand your ground law.

Origin of stand your ground laws

Governments have long recognized the rule of self-defense known as the castle doctrine, which dates back to English common law. In other words, “a man’s home is his castle” and he has the right to defend it. What this means is that if intruders enter your home and refuse to leave or issue threats, you are allowed to defend yourself, with deadly force, if necessary.

In 2005, Florida expanded that law outside the home to anywhere a person has a right to be. According to the Florida statute: “A person is justified in using force... against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other’s imminent use of unlawful force... a person is justified



in the use of deadly force and does not have a duty to retreat if he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony...”

In addition to there being no duty to retreat with these laws, the burden is usually on the prosecutor to disprove the credibility of a self-defense claim. A prosecutor in the Miami-Dade State Attorney’s Office told the *Tampa Bay Times*, “The limitations imposed on us by the ‘stand your ground’ laws made it impossible for any prosecutor to pursue murder charges. This is certainly a very difficult thing to tell a grieving family member.”

In fact, according to a series of articles on stand your ground laws in the *Tampa Bay Times*, once Stand Your Ground has been invoked, the justice system only need ask three questions. “Did the defendant have the right to be

When Standing Your Ground Goes Horribly Wrong

Two cases that would seem to lend a strong argument for repealing, or at least revising, Florida’s Stand Your Ground Law occurred just nine months apart. The death of Trayvon Martin on February 26, 2012 brought national attention to the debate over stand your ground laws. In November of the same year, the killing of Jordan Davis in Jacksonville, Florida re-ignited the debate. Just like Trayvon, Jordan was African American and only 17 years old.

Armed with iced tea and Skittles

Trayvon, a 17-year-old African American teenager who lived in Miami, was visiting his father at a gated community in Sanford, Florida. They were watching the NBA All-Star game when Trayvon decided to get some snacks at the nearby 7-Eleven. He wore his dark hoodie and was returning home with Skittles and an Arizona Iced Tea when a member of the neighborhood watch, 29-year-old George Zimmerman, spotted the youth walking down the street. Zimmerman was patrolling the area in his SUV and carried a licensed 9-millimeter handgun.

According to news reports, Zimmerman called 911 and reported “a real suspicious guy...up to no good...” When Martin began running away, Zimmerman followed, despite being told by the dispatcher not to go after him. Minutes later, the two were fighting on the ground. Zimmerman’s injuries (cuts and lacerations on the back of his head, a broken nose, and bruises

on his face) support the fact that he was on his back. Zimmerman fired a single shot at point blank range, killing Martin. There was no evidence of wounds on Martin’s body other than the single gunshot.

Zimmerman was questioned by the Sanford police at the time but was not arrested until 45 days later. Although Martin was unarmed, Zimmerman claimed self-defense, citing Florida’s Stand Your Ground Law, and pled not guilty to a second-degree murder charge. His trial is set for June 2013.

While visiting a Texas university, former Florida Governor Jeb Bush, who signed Florida’s Stand Your Ground legislation into law, doubted the law applied in the case against Zimmerman. “‘Stand your ground’ means ‘stand your ground,’” Bush said. “It doesn’t mean chase after somebody who’s turned their back.”

Killed over loud music

Jordan Davis was hanging out with three of his friends on the Friday after Thanksgiving. They had been to the mall and were heading back to Jordan’s house in a friend’s SUV, when they stopped at a gas station convenience store for cigarettes. As young people do, they were playing their music loud.

Michael Dunn pulled into the spot next to Davis and his friends and asked them to turn their music down. One of the friends complied, but then Davis turned it back up and entered

there? Was he engaged in a lawful activity? Could he reasonably have been in fear of death or great bodily harm?"

It is important to note that Floridians are allowed to carry concealed weapons with a permit and more than two million permits have been issued in that state since the 1980s.

Steve Jansen, a former prosecutor in Detroit, who is also the vice president of the Association of Prosecuting Attorneys and one of the authors of an in-depth study on the expansion of the castle doctrine, told *Mother Jones*, "Society hesitates to grant blanket immunity to police officers, who are well-trained in the use of deadly force and require yearly testing of their qualifications to carry a firearm. Yet the expansion of the castle doctrine has given such immunity to citizens."

Florida's Stand Your Ground Law sponsors, state representative Dennis Baxley and state senator Durell Peaden, were motivated to pass the law after the widespread looting

that took place after several major hurricanes hit Florida in 2004. They believed that citizens of their state had the right to defend themselves and their property with deadly force without legal intervention.

Once the law passed in Florida, the National Rifle Association (NRA), the country's most powerful gun lobby, and the American Legislative Exchange Council (ALEC), a conservative research group, both supportive of stand your ground laws, put time and

money into convincing other states to pass similar legislation. Then NRA Executive Vice President Wayne LaPierre (he is now the organization's CEO) told *The Washington Post*, that the Florida

legislation was just "the first step of a multi-state strategy" to bring these laws to more states. "There's a big tailwind we have, moving from state legislature to state legislature," he said.

The campaign was so successful that a majority of states now have some form [>continued on page 6](#)



into a verbal altercation with Dunn. Pulling a gun out of his glove compartment, Dunn shot into the SUV 10 times, killing Davis. The SUV fled among a hail of bullets. When Dunn's girlfriend came out of the convenience store, they left as well, never calling police.

The following day, the police caught up with Dunn at his condo. According to a *Rolling Stone* article, Dunn waived his Miranda rights, saying he didn't need a lawyer. "They defied my orders," Dunn allegedly told police. "What was I supposed to do if they wouldn't listen?" He would eventually be charged with first-degree murder, as well as three counts of attempted murder.

His lawyer, who Dunn retained several days after the shooting, claimed that Dunn felt "threatened" by the four friends and attempted to paint them as gang members. Dunn also claimed to have seen a shotgun aimed at him, so he claimed self-defense under Florida's Stand Your Ground Law. Dunn has since retained a different lawyer, Cory Stolla, who has not ruled out using the Stand Your Ground defense at Dunn's trial, which is scheduled for September 2013.

"I don't have to prove the threat, just that Mike Dunn believed it," Stolla told *Rolling Stone*. "This is a family man who never had a violent incident in his life, who acted because of words said by Jordan Davis. So absolutely, this is a Stand Your Ground case, based on the law in Florida."

Reviewing Florida's law

After the Trayvon Martin killing, Florida Governor Rick Scott

put together a special task force to analyze and assess the controversial state law. In November 2012 (before the Jordan Davis killing), the group endorsed Stand Your Ground and declared, "All persons have a fundamental right to stand their ground and defend themselves from attack with proportionate force in every place they have a lawful right to be and are conducting themselves in a lawful manner."

The task force did recommend some changes to the law, including limiting neighborhood watches to "observing, watching and reporting." Other recommendations included requiring "more training for law enforcement on the meaning of self-defense laws, that the legislature better define a shooter's criminal immunity, and that it fund a study of the correlation between Stand Your Ground and diversity variables, including race."

Benjamin Crump, a Tallahassee attorney who represents Trayvon's parents, still feels that Florida's law is too vague. He told *The Huffington Post*, "In Trayvon Martin's case, we all believe it's asinine that you can pursue someone, that you can be the aggressor and then shoot an unarmed kid and claim you were standing your ground. Until we fix this law, there are going to be a lot of asinine claims of 'Stand Your Ground' when there's another Trayvon Martin."

Eight days after Crump made this statement there was another Trayvon Martin—his name was Jordan Davis.

— Phyllis Raybin Emert and Jodi L. Miller

Standing your Ground *continued from page 5*

of the law. In addition, according to an article in *Mother Jones*, gun manufacturers, including Berretta, Remington and Glock have donated nearly \$40 million to support the NRA's lobbying efforts.

Effect of standing your ground

According to Federal Bureau of Investigation statistics, justifiable homicides by civilians using firearms have tripled in Florida since the law's passage in 2005.

In 2012, Mark Hoekstra, an economist at Texas A & M University, analyzed national crime statistics in relation to states that have stand your ground laws. Hoekstra told National Public Radio (NPR), "Our study finds that homicides go up by seven to nine percent in states that pass the laws, relative to states that didn't pass the laws over the same time period." Hoekstra said his study found 500 to 700 more homicides were committed per year as a result of the laws and speculated that one possibility for the increase could be that arguments normally resulting in fistfights are escalating "into something much more violent and lethal."

Arthur Hayhoe, director of the Florida Coalition to Stop Gun Violence, told *The Los Angeles Times*, "It has nothing to do with self-defense. It's just expanding the use of self-defense to justify shooting Uncle Joe in the backyard because you don't like his barbecue."

In *The New York Times'* Room for Debate opinion section, Gregory O'Meara, a former prosecutor and associate professor of law at Marquette University, wrote, "Under the Stand Your Ground law, there is never a requirement that one withdraw or retreat before using deadly force, and the requirements of reasonableness are attenuated [reduced] or essentially removed because the other witness is dead, and the defender may shade the truth. Thus, Stand Your Ground laws may provide a rock-solid defense to paranoid or dangerously aggressive people who are armed with deadly force. Current law protects those using defensive force, including deadly force, while insisting that they act reasonably. Stand Your Ground laws upset that careful balance by removing the requirement that the defender act reasonably."

Is racism a factor?

The Tampa Bay Times investigative series "Understanding Stand Your Ground," which analyzed stand your ground cases in Florida and was published in the *Investigative Reporters and Editors Journal*, found: "Nearly 70 percent of those who invoke 'stand your ground' have gone free, in nearly a third of the cases, defendants initiated the fight, shot an unarmed person or

pursued their victim and still went free." The findings showed that "defendants claiming 'stand your ground' are more likely to prevail if the victim is black. Seventy-three percent of those who killed a black person faced no penalty compared to 59 percent of those who killed a white person."

At the same time, "white defendants who invoked the law were charged at the same rate as black defendants, and white defendants who went to trial were convicted at the same rate as black defendants...four of the five black people who killed a white person went free; five of six white people who killed a black person went free."

In April 2012, Reverend Markel Hutchins brought a federal lawsuit challenging Georgia's Stand Your Ground Law, claiming that it does not protect African Americans equally. The suit claims, "it is not clear what actions would create 'reasonable belief' that deadly force is necessary" and that some courts "have accepted the race of a victim as evidence to establish the reasonableness of an individual's fear in cases of justifiable homicide."

In an interview with Georgia Public Broadcasting, Rev. Hutchins said, "Fear is oftentimes based on one's own bias, so when you have public policy that, literally lends itself to people being able to commit crimes or shootings under the color of law, because they're reasonably afraid, it makes bad public policy and puts the constitutional rights of so many people around the country in jeopardy."

Kenneth Nunn, a professor at the University of Florida Levin College of Law, wrote on *The New York Times'* Room for Debate opinion section, "As several legal scholars have pointed out, the connection between reasonableness and race is problematic. African Americans, black males in particular, have been constructed in popular culture as violence-prone and dangerous. Sociologists tell us this attitude toward black males is widely shared, sometimes unconsciously. In the minds of Americans who hold these views, fear of black males, and consequently the use of deadly force against them, is 'reasonable.'"

Professor Nunn explained, "Many Stand Your Ground statutes grant killers who claim self-defense immunity from prosecution, so they cannot be arrested if the police view their assertions of self defense to be reasonable...the reasonableness of a killer's actions ought to be decided in open court by juries made up of ordinary people, and not determined prior to trial in the secrecy of the police station." ■



Filter Flaw *continued from page 1*

access sites like GLSEN (The Gay, Lesbian and Straight Education Network), a national education organization established to ensure safe schools.

The school's computer system was blocking access to pro-LGBT sites like that and the Human Rights Campaign, yet it was allowing access to hate sites like the Ku Klux Klan, she observed. Bosco says her students also began to notice the blocks and ask questions.

For instance, a student who was writing a report on Harvey Milk, an openly gay American politician, hit a stumbling block when he could not gain access to websites with information about Milk. In addition to the practical problems of not having access to information and resources, Bosco says she was also concerned about the message these blocks were sending to her students.

School filters are set up to block things that are bad, Bosco noted. Therefore, she feared that by blocking pro-LGBT sites, the school was suggesting to kids that there is "something wrong" with LGBT.

'Don't Filter Me'

Bosco says that both she and her students approached the school about the blocks a couple of years ago. Initially the school was apprehensive and only agreed to unblock requested websites for her, not her students, Bosco recalls. There was a fear, she said, that students might somehow get to something that was inappropriate.

Then, some students took it upon themselves to contact the American Civil Liberties Union (ACLU), an organization that advocates for individual rights. It would later become clear that the Vineland students were not alone. A number of schools around the country were using similar web filtering software that also blocked access to pro-LGBT sites.

To address this matter, the ACLU in February 2011 embarked on a national initiative called the "Don't Filter Me" campaign. The campaign reached out to schools and students around the country, including here in New Jersey, to inquire about their web filtering software and stop what it called "viewpoint discrimination."

In a press release about the campaign, the ACLU stated, "When public school districts block these LGBT categories, preventing students from accessing websites for positive LGBT rights organizations, they often still allow access to anti-LGBT sites that condemn LGBT people or urge us to try to change our sexual

orientation. This viewpoint discrimination violates students' rights under the First Amendment."

Bosco recalls that the Vineland School District moved promptly to remove the filters after being contacted by the ACLU, as did a number of other schools around the country.

One challenger

In October 2012, the ACLU issued a report on the conclusion of its "Don't Filter Me" campaign, in which it stated that "[p]ublic schools across the country overwhelmingly responded positively" to the campaign.

"What we found and were happy to find was that schools' main concerns were to comply with CIPA," said Joshua Block, a staff attorney for the national ACLU's LGBT project.

Only one school district, the Camdenton R-III School District located in Missouri, did not cooperate with the ACLU. The ACLU subsequently brought legal action against that district in August 2011.

In reaching a decision in that case, the district court relied on a number of earlier First Amendment cases affecting schools, including a 1982 case known as *Board of Education, Island Trees Union Free School District No. 26 v. Pico*. Instead of the Internet, that case involved the removal of books from a school library. It found that, "Local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books...."

Pat Scales, chair of the American Library Association's Intellectual Freedom Committee, told *The New York Times*, "These filters are a new version of book-banning or pulling books off the shelf. The difference is, this is much more subtle and harder to identify."

The Missouri school district used the URLBlacklist filter. According to the ACLU, this particular filter blocked 41 positive LGBT sites that were not blocked by other filters tested and recommended by the ACLU. In addition to blocking these positive sites, the filter failed to block anti-gay sites. How could this happen? According to court testimony, it all came down to what category a website came under. URLBlacklist classified gay organizations, such as GLSEN, under the "sexuality" category, whereas anti-gay websites were classified under the "religion" category. The "sexuality" category was blocked, the "religion" category was not.

After reviewing the facts in the web filtering case, the court determined that the Missouri school "intended to



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egregious — flagrant, blatant, deliberate. **imminent** — impending, about to happen. **pernicious** — destructive, malicious. **plaintiff** — in a civil action, the person or persons bringing the lawsuit against another person or entity (the defendant).

Filter Flaw *continued from page 7*

discriminate based on viewpoint” because it continued to use a web filtering system that it was told by the ACLU had “viewpoint-discriminatory effects.”

In February 2012, the district court ordered the school district to change its web-filtering software to a new system that does “not discriminate against websites expressing a positive viewpoint toward LGBT individuals.” Although attorneys for the school district argued that individual websites could be unblocked upon request of the student, the court held that “students may be deterred from accessing websites expressing a positive view toward LGBT individuals either by the inconvenience of having to wait 24 hours for access or by the stigma of knowing that viewpoint has been singled out as less worthy by the school district and the community.”

In March 2012, the Camden R-III School District agreed to a settlement with the ACLU. Under the terms of the settlement, the school district agreed to stop blocking the pro-LGBT sites in question and also agreed to an 18-month monitoring period to ensure compliance of the order. The district also paid \$125,000 in legal fees.

Positive response from most

Again, Block noted that the Missouri school district was

an exception and that schools overwhelmingly complied with the ACLU’s requests.

“Public schools aren’t looking for software that discriminates,” Block was quoted as saying in the final ACLU report. “Schools want filtering software that blocks pornography while still allowing students to access diverse viewpoints and educational resources. They don’t need or want software that discriminatorily blocks non-sexual LGBT websites.”

One of the biggest breakthroughs, Block says, was in getting better communication between the schools and the companies that make the filtering software. Since the ACLU’s campaign, a number of software companies have reportedly changed their web-filtering programs and have taken other proactive steps to address the problem, he noted.

Better now

Bosco notes that within Vineland High School the climate is much better now. It has been helpful, she says, to educate people about the need for students to have access to information. It is important for students

to be able to read about different viewpoints and to know that there are support systems out there if they need them, she noted.

It is not the role of the school district to influence students one way or the other, Bosco said. “We want them to be independent thinkers.” ■



National Security v. Individual Rights *continued from page 3*

Askin recalls that his law clinic was involved about 40 years ago in a lawsuit that challenged the U.S. military’s surveillance of anti-war and civil rights (unrelated to the military) activities. The U.S. Supreme Court eventually dismissed that case with a 5-4 decision. The Court found that “the chilling effect” was not enough “to allow anyone to challenge the Army in court,” Askin noted.

The challenge with suing in these types of cases, Askin said, is that judges are hesitant to intervene if the government claims it is a matter of national security. Judges don’t want to be blamed if something goes wrong, he said.

When it comes to undercover surveillance, Askin contends that there must be a reason for law enforcement to believe that someone is planning a criminal activity in order to spy on them. It cannot just be because someone is expressing his or her free speech rights, he says.

As the nation grapples with questions of national security in these uncertain times, opinions remain mixed on how much undercover police work is appropriate to keep Americans safe. The difficulty will always be finding the right balance between liberty and security. ■