

# NEWS CENSORSHIP

THE NATIONAL COALITION AGAINST CENSORSHIP NEWSLETTER

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## Reflections on Book Censorship, circa 2009

Toni Morrison won the Nobel Prize for Literature, the Pulitzer Prize for fiction, the National Book Award Medal of Distinguished Contribution to American Letters, and most other awards that can be bestowed on a writer. She's also a much-censored author.

*Beloved*, *The Bluest Eye*, and *Song of Solomon* have been challenged in dozens of schools around the country, and banned from classrooms and school libraries on numerous occasions. In one case, her books were investigated by law enforcement officials who received a complaint that they were obscene and "harmful to minors."

Morrison is not the only target of censorship in high schools. Indeed, in a troubling trend, censorship is creeping up the age ladder and affecting students who are or will soon be adults. In the recent past, challenged books have included: *Prince of Tides*, by Pat Conroy; Tony Kushner's *Angels in America*; Cormac McCarthy's *Child of God*; *Slaughterhouse Five* by Kurt Vonnegut; and *Girl, Interrupted* by Susanna Kaysen. And this list doesn't include classics that are perennially challenged, like *Huck Finn* and *Of Mice and Men*.

At the June 3, 2009 launch of NCAC's Free Speech Leadership Council, Morrison conversed with author Fran Lebowitz about the history of censorship, its motivations, and its consequences. The event also celebrated the publication of *Burn this Book*, a collection of essays on censorship that Morrison edited. It all started with Adam and Eve tasting the fruit of the tree of knowledge, says Morrison. For this sin, they were cast out of Eden. The message was: "Knowledge is bad, it is sinful, it will corrupt you." At the same time, she

observed, knowledge is "the route out of any oppression, any limitation." Slaves once risked their lives to learn to read. "You have to read, you have to know, you have to have access to knowledge." No wonder one of the first acts of totalitarian regimes is to censor their critics.



Toni Morrison and Fran Lebowitz at the launch of the Free Speech Leadership Council, hosted by Jane Friedman, former CEO of HarperCollins Worldwide.

Yet, even in our developed democracy, censorship disputes reveal fear of knowledge and where it will lead: fear that sexual knowledge will corrupt youth, or fear that acknowledging the reality of racial hatred and sexual violence will be too painful and disturbing. So people opt for narratives that provide "false comfort and fake innocence," in Morrison's words. This comes at great cost, however, as she observes: "Certain kinds of trauma visited on peoples are so

deep, so cruel, that ... only writers can translate such trauma and turn sorrow into meaning, sharpening the moral imagination.... Art is a way to mourn, art is a way to know, art is a way to be in the world, art is a way to remain human."

Fear leads to repression, which spreads unless countered: by parents defending their children's ability to have wide-ranging access to ideas; by teachers and school administrators defending the freedom to read; by religious leaders defending the freedom to think for oneself; by elected officials defending the role of education in representative democracy; and by the media defending the First Amendment, the source of press freedoms.

As Morrison sums it up, "a writer's life and work are not a gift to mankind. They are its necessity."

To see more, visit: [ncac.org/A-Conversation-withToni-Morrison](http://ncac.org/A-Conversation-withToni-Morrison)

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Actors' Equity Association  
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The Dramatists Guild of America  
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International Reading Association  
Lambda Legal  
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National Communication Association  
National Council for the Social Studies  
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### Censorship News

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# The First Amendment in the Courts

## FCC Challenge, Again

The Supreme Court ducked the First Amendment issues in *Federal Communications Commission v. Fox* (See CN 109), a challenge to the FCC's ban on "fleeting expletives." Fox was fined because Cher, commenting on her critics, said "fuck 'em" and Nicole Ritchie uttered the words "fuck" and "shit" during broadcasts of the Billboard Music Awards. Fox argued that the rule is applied in an arbitrary and capricious manner, and that it violates the First Amendment.

In a 5 - 4 decision, the Court ruled that the FCC's actions were a rational response to "foul-mouthed glitterati from Hollywood." Given the FCC's inconsistent application of the rule, however, it is hard to imagine what would qualify as "arbitrary and capricious."

The Court sent the case back to the Second Circuit Court of Appeals to consider the First Amendment claims. A week later, the Court also vacated a Third Circuit decision (*FCC v. CBS*) holding that the FCC had been arbitrary and capricious in fining CBS for "fleeting nudity" over Janet Jackson's "wardrobe malfunction" at the 2004 Super Bowl broadcast and sent it back for reconsideration in light of *Fox*.

## Are Depictions of "Animal Cruelty" Protected Speech?

*United States v. Stevens*, a major First Amendment case coming up next fall, challenges a federal law prohibiting the commercial creation, sale or possession of depictions of animal cruelty that lack serious value. The plaintiff was convicted and sentenced to 37 months in prison for videotapes about pit bulls, which included historical footage of dog fights and dog fights in Japan, where they are legal, and commentary about the care and training of pit bulls. The Solicitor General, in defending the law, is asking the Court to declare that depictions of "animal cruelty," constitute a category of unprotected speech, like obscenity, unless a jury decides they have serious value.

Such a holding would affect documentary film and art, as well as depictions of hunting, bullfights, and the like. While the "serious value" exemption might appear to

mitigate the effects of the statute, it is inadequate because the definition of protected expression would depend on whether judges and juries subjectively decide it has serious value. Even more alarming is the government's suggestion that whole categories of speech might not be protected if their "societal costs" outweigh "the value of the speech." By this logic, almost anything controversial could be up for grabs, including videos games, rap music, depictions of violence, flag desecration, racially charged speech, etc., etc.

## The End of Gene Patents?

Who owns your DNA? The answer might surprise you. The US Patent and Trademark Office grants property interests in certain types of living organisms and their constituent parts, including genes, the building blocks of human life.

Gene patents prevent anyone other than the holder of the patent from conducting research on that particular gene. The control exercised by gene patent holders not only raises ethical and public health concerns, but also constitutes government-sanctioned restrictions on medical research and information.

The ACLU and the Public Patent Foundation are challenging the constitutionality of this practice in a recently filed case, *Association for Molecular Pathology, et al. v. United States Patent and Trademark Office, et al.* At issue are two patents, owned by Myriad Genetics and the University of Utah Research Center, on mutations of the BRCA gene — indicators for increased risk of breast and ovarian cancer.

Myriad has aggressively enforced its patent, precluding other scientists from doing research on the BRCA mutations. Its monopoly on testing, and its \$3000 charge, impedes the ability of many poor women to be tested for the mutations.

The case is a creative attack on suppression of scientific research facilitated by the government through its power to grant patents. Like the ACLU, we think this violates the First Amendment. We will keep you posted on developments in the case.

## Ward Churchill Redux

Ward Churchill is back in the news. He's the tenured professor at the University of Colorado who was fired after a firestorm of criticism from public officials and the media over an essay he'd written five years earlier referring to the victims of the attack on the World Trade Center as "little Eichmanns." The University ostensibly fired him for "academic misconduct," but a jury didn't buy it and concluded that he'd really been fired for his controversial views in violation of his First Amendment rights.

Even under ordinary circumstances, holders of unconventional or controversial views can expect to be challenged on professional grounds. This is part of the give and take of academic life. But this was no ordinary case. The university preempted discussion and debate among the community of interested scholars by swiftly initiating disciplinary proceedings, clearly in response to external pressures. This created more than an image problem: caving in to such pressures undermined the integrity and credibility of the administration and faculty. In such a compromised position, they could hardly be effective advocates for either academic freedom or scholarly standards.

Does this mean that academics with controversial views who become embroiled in free speech controversies are immunized

against charges of academic misconduct? No, but it serves as a warning that the infringement of constitutional rights invites courts and juries into what would otherwise be internal academic decisions. Thus, it is in the self-interest of colleges and universities to respect and protect the constitutional rights of faculty members. If academic review is in fact warranted, it will be vastly easier to conduct if the inquiry is not hampered by wrong-doing on the part of the institution, and by questions about its legitimacy and motives.

The right to speak, write and think independently is at the core of higher education. This principle is important enough that it deserves recognition under all but exigent circumstances. If a colleague of long standing (Churchill had been on the faculty since the 1980s) is not up to snuff, there was ample time before the controversy erupted to address the problem, and there will be time again when passions have cooled. There was no rush – except for the rush to condemn.

To preserve the principle underlying academic freedom and their own autonomy, and to prevent the damaging sequence of events that occurred in Churchill's case, universities and scholars should always defend colleagues' right to hold and express controversial views as a matter of principle, regardless of whether they agree with them. They fail to do so at their risk, and ours.

— Joan Bertin

For a longer version, please visit: [ncac.org/Ward-Churchill-Redux](http://ncac.org/Ward-Churchill-Redux)

## THE LONG AND THE SHORT OF IT

- In February, the NCAC and the ACLU of Tennessee jointly responded to a complaint that filters installed at the Central High School in Knoxville, TN were blocking websites providing political and educational content about LGBTQ issues. The ACLU brought an action alleging constitutional violations and the school agreed to modify its internet policy.
- In March, Boston College barred former Weather Underground member and Professor of Education Bill Ayers from speaking on campus after a local talk show host criticized the college, citing Ayers' prior political activities.
- At the behest of a Chicago Alderman, a brand-new mural on a private wall was painted over. The mural, by Chicago artist and muralist Gabriel Villa, depicted three Chicago Police Department blue light cameras that carried the CPD logo along with other images meaningful to the local Hispanic community: a crucified Christ, a deer head, and a skull.
- The University of North Carolina at Wilmington censored a large part of the Century Project – a chronological series of nude photographic portraits of women and girls from the moment of birth to nearly a hundred years of age – removing all images of minors. The Project had traveled for 18 years without any problems.
- In other campus news, Clark University canceled a talk by Norman Finkelstein, Holocaust scholar and prominent critic of Israel's occupation of the West Bank and Gaza, saying the speech would conflict with a conference hosted by the Strassler Family Center for Holocaust and Genocide Studies, and "would invite controversy and not dialogue or understanding."
- The administration at Bowling Green State University – Firelands ordered the removal of a sculpture commenting on the sexual abuse of children. In protest, the gallery director closed the whole show.
- The library board in West Bend, WI has voted to keep a selection of young adult books dealing with LGBTQ issues in the youth section of the library, rather than relegating them to the adult section. But a small group of citizens are still calling for their removal and beyond that, a public book burning of one particular novel: Francesca Lia Block's *Baby Be-Bop* which has a gay teenager as its protagonist.
- In May, President Obama announced that he would remove most funding earmarked for abstinence-only education. Let's see if Congress goes along.
- To save money and the environment CN is now being published twice a year in hard copy. For daily updates on censorship news and to weigh in on the discussion, visit NCAC's blog: [www.ncacb.org.wordpress.com](http://www.ncacb.org.wordpress.com)
- Go Green!** Starting now, you can reduce your paper mail and get CN emailed to you as a pdf. Send an email to [CNGreen@ncac.org](mailto:CNGreen@ncac.org) or check the box on your reply envelope to start getting CN in your inbox.

# CENSORSHIP news

## Excerpt from "Through a Lens Starkly"

By JoAnn Wypijewski

*Taking nude pictures of yourself —  
nothing good can come of it.*  
— Police Capt. George Seranko,  
Greensburg, Pennsylvania

Captain Seranko made his observation after three girls and three boys at Greensburg Salem High School were charged with child pornography. The girls, ages 14 and 15, are charged with taking pictures of themselves, nude or seminude; the boys, 15, 16 and 17, with receiving them. The cellphone in which these dangerous images were lodged had been confiscated at school, not an outrageous exercise of authority if school officials had merely stashed the phone in a drawer. But the officials had to snoop. One can picture their fevered actions, fumbling with the student's phone ... scouring through the teen's pictures and messages, expectant that their suspicions will be confirmed, certain that all they want is to protect the children... And yet, there they are, instant ogglers, prying into places not meant for them, gazing at images not made for them, drenching the relationship between school authority and student in sex.

The recent attention to teen "sexting" has focused quite a lot on the presumed self-exploitation of kids, not so much on the prurient reflex of grown-ups who spy on and punish them. It has dwelt quite a lot on the traps of technology, not so much on the desires that precede picking up a camera. Quite a lot on the question of whether the teens are sex offenders or merely stupid, sluttish or mean, not so much on the freedom to see and be. Quite a lot on the legal meaning of images, not so much on the ways in which making them might delight, or on the cultural

freakout that colors law, images and how they are perceived.

Across the state from where Captain Seranko was discoursing on nude photographs, District Attorney George Skumanick Jr. was threatening sixteen girls and four boys with felony charges. Officials at Tunkhannock Area High School had confiscated phones, discovered about 100 photos and called the DA, who told reporters that the kids could face seven years in prison. In February, Skumanick convened parents to say that their kids were involved in a child porn investigation but could avoid being nailed by submitting to a ten-hour re-education program ... and agreeing to an "informal adjustment," in effect a guilty plea before judgment in the juvie system, which would put them on probation for at least six months and subject them to random drug tests. If the kids get in trouble while on probation, they could end up with a juvenile record of the sex offense.

All but three families submitted to the DA's coercion. One father complained that his daughter was pictured simply wearing a bathing suit; Skumanick called the image "provocative," and she is being re-educated, writing a report on "Why it was wrong" to pose in her bathing suit, answering, "How did [it] affect the victim? The school? The community?" and learning "what it means to be a girl in today's society."

DA Skumanick only seems bizarre; in fact, he and school officials are doing what judges and juries in child porn cases have been doing for years, lingering over images, searching for signs of the erotic or proto-erotic, pondering What if? Maybe so? One might think... and welding the child to sex.

But what of the teenagers...who mean to be sexy, for their boyfriend, their girlfriend, themselves? There is nothing new about teenagers having sex and taking pictures, or indulging in fantasy as a substitute; nothing new about the mixed thrill of having a secret and risking exposure, or sharing that "secret," sometimes clumsily. The new means of production carries pitfalls as surely as the fleeting passions of a teenager. The rude boy documenting a girl going down on him unawares to share behind her back with his MySpace buddies will always be with us, but her problem, and his too, started before the shutter clicked. The girl who has mastered the nude self-portrait may later regret its mass circulation, but she may also have got comfortable in her skin while taking pictures. Maybe the Polaroid Land Camera should make a comeback, but it is just possible that the 15-year-olds are envisioning, however inchoately, a saner world than the one the grown-ups lecturing them have constructed, one where their life chances won't be ruined by a "compromising" photograph on the Internet. If sexting really is as common as is claimed, it's more likely to proliferate than to abate, and then the issue won't be scandal or embarrassment but banality.

The truth is, a lot of good can come of taking nude pictures. Not so much the image as the act, and less the act of sex than the play of love, or imagination or freedom among friends. Remember play? Remember dalliance? Remember the captured glimpse of a lover stripped and weak with need? Grown-ups, don't get comfortable. A bill in the Massachusetts Legislature proposes to criminalize nude pictures of people over 60 and people who are disabled, for their own protection.

This piece originally appeared in The Nation. The full text is available here: <http://www.thenation.com/doc/20090518/wypijewski>  
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SAVE THE DATE: 10.19.09

NCAC'S 35TH ANNIVERSARY CELEBRATION, A NIGHT OF COMEDY WITH JUDY BLUME & FRIENDS

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