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And Tango Makes Three heads ALA's 2010 "most challenged" list

Justin Richardson's and Peter Parnell's *And Tango Makes Three* tops the list of the American Library Association's (ALA) Top Ten List of the Most Frequently Challenged Books of 2010. The list was released April 11 as part of the ALA's State of America's Libraries Report.

And Tango Makes Three is an award-winning children's book about the true story of two male Emperor Penguins hatching and parenting a baby chick at New York's Central Park Zoo. The book has appeared on the ALA's Top Ten List of Frequently Challenged Books for the past five years and returns to the number one slot after a brief stay at the number two position in 2009. There have been dozens of attempts to remove *And Tango Makes Three* from school and public library shelves. Those seeking to remove the book have described it as "unsuited for age group," and cited "religious viewpoint" and "homosexuality" as reasons for challenging the book.

Off the list this year are such classics as Alice Walker's *The Color Purple*; *To Kill a Mockingbird* by Harper Lee; *Catcher in the Rye* by J.D. Salinger; and Robert Cormier's *The Chocolate War*. Replacing them are books reflecting a range of themes and ideas that include *Brave New World* by Aldous Huxley; *The Absolutely True Diary of a Part-Time Indian* by Sherman Alexie; *The Hunger Games* by Suzanne Collins; and Stephenie Meyer's *Twilight*.

"While we firmly support the right of every reader to choose or reject a book for themselves or their families, those objecting to a particular book should not be given the power to restrict other readers' right to access and read that book," said Barbara Jones, director of ALA's Office for Intellectual Freedom. "As members of a pluralistic and complex society, we must have free access to a diverse range of viewpoints on the human condition in order to foster critical thinking and understanding. We must protect one of the most precious of our fundamental rights – the freedom to read."

The ALA Office for Intellectual Freedom (OIF) collects reports on book challenges from librarians, teachers, concerned individuals, and press reports from across the United States. A challenge is defined as a formal, written complaint filed with a library or school requesting that a book or other material be restricted or removed because of its content or appropriateness.

In 2010, OIF received 348 reports on efforts to remove or restrict materials from school curricula and library bookshelves.

Though OIF receives reports of challenges from a variety of sources, a majority of challenges go unreported.

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Published by the ALA Intellectual Freedom Committee, Martin Garnar, Chair

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READ BANNED BOOKS

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ALA's most challenged list …from page 127)

The ALA's Top Ten Most Frequently Challenged Books of 2010 include the following titles; each title is followed by the reasons given for challenging the book:

1. *And Tango Makes Three*, by Peter Parnell and Justin Richardson. Reasons: Homosexuality, Religious Viewpoint, Unsuited to Age Group.

2. *The Absolutely True Diary of a Part-Time Indian*, by Sherman Alexie. Reasons: Offensive language, Racism, Sex Education, Sexually Explicit, Unsuited to Age Group, Violence.

3. *Brave New World*, by Aldous Huxley. Reasons: Insensitivity, Offensive Language, Racism, Sexually Explicit.

4. *Crank*, by Ellen Hopkins. Reasons: Drugs, Offensive Language, Sexually Explicit.

5. *The Hunger Games*, by Suzanne Collins. Reasons: Sexually Explicit, Unsuited to Age Group, Violence.

6. *Lush*, by Natasha Friend. Reasons: Drugs, Offensive Language, Sexually Explicit, Unsuited to Age Group.

7. *What My Mother Doesn't Know*, by Sonya Sones. Reasons: Sexism, Sexually Explicit, Unsuited to Age Group.

8. *Nickel and Dimed: On (Not) Getting By In America*, by Barbara Ehrenreich. Reasons: Drugs, Inaccurate, Offensive Language, Political Viewpoint, Religious Viewpoint.

9. *Revolutionary Voices*, edited by Amy Sonnie. Reasons: Homosexuality, Sexually Explicit.

10. *Twilight*, by Stephenie Meyer. Reasons: Religious Viewpoint, Violence.

For more information on book challenges and censorship, please visit the Office for Intellectual Freedom's Banned Books Week Web site at www.ala.org/bbooks.

The Office for Intellectual Freedom is charged with implementing ALA policies concerning the concept of intellectual freedom as embodied in the *Library Bill of Rights*, the Association's basic policy on free access to libraries and library materials. The goal of the office is to educate librarians and the general public about the nature and importance of intellectual freedom in libraries. As part of its mission, OIF offers comprehensive support for librarians, teachers, and members of the public who are working behind the scenes and on the front lines to protect the public's right to read.

The State of America's Libraries Report documents trends in library usage and details the impact of library budget cuts, technology use and the various other challenges facing U.S. libraries. The full report is available at http://tinyurl.com/alasalr2011. □

survey shows Americans oppose banning books

Banning or censoring books has been debated for years. A new Harris Poll shows, however, that a majority of Americans think no books should be banned completely (56%) while fewer than one in five say there are books which should be banned (18%); a quarter are not at all sure (26%). The older and less educated people are, the more likely they are to say that there are some books which should be banned completely. Opinions on banning books are linked to political philosophy: almost three quarters of Liberals (73%) say no books should be banned, compared to six in ten Moderates (60%) but only two in five Conservatives (41%) who say no books should be banned.

These are some of the results of a Harris Poll of 2,379 adults surveyed online between March 7 and 14, 2011 by Harris Interactive.

While few Americans think that there are books which should be banned completely, opinions differ on books that should be available to children in school libraries. Strong majorities say that children should be able to get *The Holy Bible* (83%) and books that discuss evolution (76%) from school libraries. Majorities also say so for other religious texts such as the *Torah* or *Talmud* (59%) and the *Koran* (57%), but approximately a quarter say these texts should not be available (24% and 28%, respectively) to children in school libraries.

Half or more say that children should be able to get books with vampires (57%), books with references to drugs or alcohol (52%) and books with witchcraft or sorcery (50%) in school libraries, but between 34% and 41% say that each of these types of books should not be available there. There is no consensus on books with references to sex (48% say they should be available, 45% say they should not) and violence (44% say should, 48% say should not). A majority of Americans say, however, that books with explicit language should not be available to children in school libraries (62%).

Older Americans are significantly more likely than those younger to say each type of book listed should not be available in school libraries, with one exception—Echo Boomers (aged 18-34) are more likely than Matures (aged 66 and older) to say that *The Holy Bible* should not be available to children in school libraries (15% vs. 9%).

Women are more likely than men to think each type of book listed should not be available to children in school libraries, with the exception of the religious texts (*The Holy Bible*, the *Torah*, *Talmud* and *Koran*), which men are slightly more likely to say should not be available.

The more education one has the less likely one is to say that each type of book listed should not be available to children in school libraries. There is between an 8 and 25 percentage point difference between those who have a post graduate education and those who have not attended college on what types of books should not be available to children in school libraries.

One reason for asking these questions is the current debate about changing the word "nigger" to "slave" every time it appears in Mark Twain's classic American novel, *The Adventures of Huckleberry Finn*. When asked if they support or oppose this change only 13% of Americans say they support it and 77% say they oppose it with six in ten (59%) strongly opposing it. Men and those with more education are more likely than women and those with less education to oppose this change.

Despite stronger support for some book censorship explored in this survey, conservatives are equally as likely as moderates and liberals to oppose this change to *Huckleberry Finn* (76%, 78% and 77%, respectively). Opposition to this change won majority support among all major ethnic groups, although White adults are more likely to oppose this change (80%) than are those who are Hispanic (71%) or Black (63%).

Despite its setting in the antebellum South, Southerners do not have outlying opinions regarding the proposed changes to *Huckleberry Finn*. Rather, Easterners are least opposed to the changes (71%) and Midwesterners are most opposed (81%) with Southerners and Westerners falling in the middle (78% and 79% respectively).

In this survey the minorities are as interesting as the majorities: large numbers of adults think that *The Holy Bible* (11%), the *Torah* (24%), the *Koran* (28%), books with vampires (34%) or ones which discuss evolution (16%) should not be available in school libraries, and 18% of the public think some books should be banned completely, including 26% of Conservatives and 29% of Matures.

The poll was conducted online within the United States between March 7 to 14, 2011 among 2,379 adults (aged 18 and over). Figures for age, sex, race/ethnicity, education, region and household income were weighted where necessary to bring them into line with their actual proportions in the population. Propensity score weighting was also used to adjust for respondents' propensity to be online.

All sample surveys and polls, whether or not they use probability sampling, are subject to multiple sources of error which are most often not possible to quantify or estimate, including sampling error, coverage error, error associated with nonresponse, error associated with question wording and response options, and post-survey weighting and adjustments. Therefore, Harris Interactive avoids the words "margin of error" as they are misleading. All that can be calculated are different possible sampling errors with different probabilities for pure, unweighted, random samples with 100% response rates. These are only theoretical because no published polls come close to this ideal.

Respondents for this survey were selected from among those who have agreed to participate in Harris Interactive surveys. The data have been weighted to reflect the composition of the adult population. Because the sample is based on those who agreed to participate in the Harris Interactive panel, no estimates of theoretical sampling error can be calculated. Reported in: harrisinteractive.com, April 12. □

"Jefferson Muzzles" mark twentieth year

For the twentieth consecutive year, the Thomas Jefferson Center for the Protection of Free Expression celebrated the April 13 birthdate of its namesake by awarding "Jefferson Muzzles" to those responsible for some of the more egregious or ridiculous affronts to free expression occurring in the previous year. Making up the list of "winners" receiving the 2011 Jefferson Muzzle are officials at every level of government—federal, state, local—and two private entities.

"Looking back over the past twenty years, it becomes apparent that, although the office holders may change, many of the same offices have made repeat appearances," said Center director Robert O'Neil. "For example, with the Obama Administration receiving a Muzzle this year, every presidential administration of the last twenty years, Republican and Democrat, has been deemed deserving of a Muzzle. Similarly, the Smithsonian Institution, the Virginia Department of Corrections, and Albemarle High School are making repeat appearances on the 2011 list."

Following is a list of all the 2011 Jefferson Muzzle "winners." To learn what they did to earn this dubious distinction, please visit the official Jefferson Muzzle webpage at http://www.tjcenter.org/muzzles/muzzle-archive-2011/.

1. The Obama Administration and BP. "It's for your own safety. Those oily pelicans are really disguised terrorists." For restricting media access to the Gulf oil spill, a 2011 Jefferson Muzzle Award goes to… The Obama Administration and BP.

2. The Transportation Security Administration. "I really need to get something off my chest." For having a young man arrested for stripping off much of his clothing to display the text of the Fourth Amendment—which he had written on his chest in preparation for scrutiny by airport security—a 2011 Jefferson Muzzle goes to… The Transportation Security Administration.

3. Secretary of the Smithsonian Institution G. Wayne Clough. "Now Showing at the Smithsonian: 'Artistic Intolerance.'" For bowing to political pressure and removing a work of video art because it included an 11-second shot of ants crawling on a crucifix, a 2011 Jefferson Muzzle goes to… Secretary of the Smithsonian Institution G. Wayne Clough.

4. The Virginia Department of Corrections. "There are already enough lawyers in prison." For denying prison inmates access to the legal self-help book *Jailhouse Lawyer's Handbook: How to Bring a Federal Lawsuit to Challenge Violations of Your Rights in Prison*, a 2011 Jefferson Muzzle Award goes to… The Virginia Department of Corrections.

5. Mississippi State Court Judge Talmadge Littlejohn. "What do you get for interrupting the judge—twenty lashes?" For charging attorney Danny Lampley with criminal contempt and putting him behind bars for refusing to recite the Pledge of Allegiance, a 2011 Jefferson Muzzle goes to… Mississippi State Court Judge Talmadge Littlejohn.

6. Gail Sweet, Director of the Burlington County (New Jersey) Library System. "What do you mean, 'No such book'? It was here last week!" For sidestepping the library's formal policy for handling controversial materials by yanking *Revolutionary Voices: A Multicultural Queer Youth Anthology* from the shelves of the entire library system upon the receipt of a single, informal complaint, a 2011 Jefferson Muzzle goes to… Gail Sweet, Director of the Burlington County (New Jersey) Library System.

7. The Administration of Albemarle High School (Virginia). "Today's gym exercise is hauling these bundles of newspapers to the dumpster." For authorizing the destruction of an entire edition of Albemarle High School's newspaper because it contained a student-written editorial that questioned the wisdom of requiring student athletes to take P.E. classes, a 2011 Jefferson Muzzle goes to… The Administration of Albemarle High School (Virginia).

8. The Administration of Hamilton College (New York). "Is Hamilton College Safe for men?" For taking political correctness to the extreme by requiring all first-year male students to participate in an ideologically based program that assumes the complicity of men in maintaining a culture of rape, a 2011 Jefferson Muzzle Award goes to… The Administration of Hamilton College (New York). Reported in: www.tjcenter.org. □

Florida *Koran* burning sparks violence in Afghanistan

His church's membership is down to just a few of the faithful. He is basically broke. Some of his neighbors wish him ill. And his head, he said, carries a bounty. Yet Terry Jones, the pastor who organized a mock trial in Gainesville, Florida, that ended with the burning of a *Koran* and led to violence in Afghanistan, remains unrepentant. He said that he was "saddened" and "moved" by the deaths, but that given the chance he would do it all over again.

"It was intended to stir the pot; if you don't shake the boat, everyone will stay in their complacency," Jones said. "Emotionally, it's not all that easy. People have tried to make us responsible for the people who are killed. It's unfair and somewhat damaging."

Afghan protests over the *Koran* burning lasted three days, with a total of 24 deaths. On April 1, a mob overran United Nations offices in the northern city of Mazar-i-Sharif, killing at least seven United Nations workers—four Nepalese guards and three Europeans from Romania, Sweden and Norway—according to United Nations officials in New York. One was a woman. Early reports, later denied by Afghan officials, said that at least two of the dead had been beheaded. Five Afghans were also killed.

The attack was the deadliest for the United Nations in Afghanistan since eleven people were killed in 2009, when Taliban suicide bombers invaded a guesthouse in Kabul.

That was followed by two days of disturbances in Kandahar, in southern Afghanistan, with businesses closed and young men rampaging through the streets, flying Taliban flags and chanting anti-American slogans.

The police fired into crowds April 2, killing 9 people and wounding 81, all by gunshots, but were more restrained the next day, as representatives of the protesters met with government officials in an effort to defuse the violence.

Still, 40 more people were wounded and 2 more killed April 3 in the confrontations between the police and protesters. Two policemen were killed over the two days, apparently because some of the protesters were armed and shot back at them. In addition, protesters set fire to a traffic policeman's booth, which caused a gas canister inside to explode, killing a person and wounding 14.

Kandahar's provincial governor, Tooryalai Wesa, expressed condolences to the families of those who were killed, and he also apologized for some police excesses in firing indiscriminately. He announced that four policemen were arrested for shooting people without justification. At the request of community leaders, Wesa also released 22 people arrested the day before, keeping only those seven who had been caught with weapons.

There were demonstrations in Kabul and elsewhere around Afghanistan as well, but they were mostly peaceful.

Afghanistan, deeply religious and reflexively volatile, has long been highly reactive to perceived insults against Islam. When a Danish cartoonist lampooned the Prophet Muhammad, four people were killed in riots in Afghanistan within days in 2006. The year before, a one-paragraph item in *Newsweek* alleging that guards at Guantánamo Bay, Cuba, had flushed a *Koran* down the toilet set off three days of riots that left 14 people dead in Afghanistan.

The continuing violence prompted the top American commander, Gen. David H. Petraeus, and the NATO civilian representative in Afghanistan, Mark Sedwill, to issue a joint statement condemning the *Koran* burnings.

"In view of the events of recent days, we feel it is important on behalf of ISAF and NATO members in Afghanistan to reiterate our condemnation of any disrespect to the *Holy Qur'an* and the Muslim faith," the statement said, speaking of the International Security Assistance Force. "We condemn, in particular, the action of an individual in the United States."

The *Koran* was burned at a Gainesville church on March 20 under the supervision of Terry Jones, a nondenominational evangelical pastor.

"We also offer condolences to the families of all those injured and killed in violence which occurred in the wake of the burning of the *Holy Qur'an*."

One local religious leader who met with the governor in Kandahar, Mullava Habibullah, was critical of the government for not interfering with protests against the *Koran* burning, but also condemned the international coalition for night raids and detentions. "People won't stop demonstrations unless the foreign troops stop night raids and arresting and killing people," he said.

Jones, the Florida pastor, caused an international uproar by threatening to burn the *Koran* last year on the anniversary of the September 11 attacks. Among others, the overall commander of forces in Afghanistan, Gen. David H. Petraeus, had warned at that time that such an action could provoke violence in Afghanistan and could endanger American troops. Jones subsequently promised not to burn a *Koran*, but he nonetheless presided over a mock trial and then the burning of the *Koran* at his small church in Gainesville, on March 20, with only 30 worshipers attending.

The act drew little response worldwide, but provoked angry condemnation in the Near East, where it was reported in the local media and where anti-American sentiment already runs high. President Asif Ali Zardari of Pakistan condemned the burning in an address before Parliament, and President Hamid Karzai of Afghanistan called on the United States to bring those responsible for the *Koran* burning to justice.

A prominent Afghan cleric, Mullah Qyamudin Kashaf, the acting head of the influential Ulema Council of Afghanistan and a Karzai appointee, also called for American authorities to arrest and try Jones in the *Koran* burning.

The Ulema Council recently met to discuss the *Koran* burning, Mullah Kashaf said. "We expressed our deep concerns about this act, and we were expecting the violence that we are witnessing now," he said. "Unless they try him and give him the highest possible punishment, we will witness violence and protests not only in Afghanistan but in the entire world."

Jones was unrepentant. "We must hold these countries and people accountable for what they have done as well as for any excuses they may use to promote their terrorist activities," he said in a statement. "Islam is not a religion of peace. It is time that we call these people to accountability."

Jones acknowledged that his action was provocative, but did not take responsibility for the violence. "Did our action provoke them?" the pastor asked. "Of course. Is it a provocation that can be justified? Is it a provocation that should lead to death? When lawyers provoke me, when banks provoke me, when reporters provoke me, I can't kill them. That would not fly."

Jones said he had received 300 death threats, mostly via e-mail and telephone, and had been told by the F.B.I. that there was a $2.4 million contract on his life. For protection, his followers—the twenty to thirty who are left—openly carry guns (they have licenses, he said) and have become more rigorous about checking their cars and visitors' bags. Police protection is sometimes

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Google settlement in limbo, but universities continue research on digitized books

Now that a judge has rejected the Google Books settlement (see *Newsletter*, May 2011, p. 85), one of the unanswered questions is what will happen to universities' dreams of conducting research on the huge archive that Google has created.

For humanists and others interested in such "Big Data" research, the answer got a little clearer in April. Several of Google's university book-digitization partners announced plans to build a new center for computational research on millions of digitized texts, many of them scanned by Google.

The Google Books settlement, scuttled in March, would have permitted the use of millions of in-copyright works owned by universities for "nonconsumptive" computational research, meaning large-scale data analysis that is not focused on reading texts. For example, researchers can mine such databases to study how the English language has grown or how rapidly humanity is forgetting its history. Under the legal settlement, Google had pledged to invest $5 million on one or two centers created for this kind of research.

With the Google project in legal limbo, Indiana University and the University of Illinois are moving forward with plans to set up a similar research center built around the archive maintained by the HathiTrust Digital Library, which was created by a consortium of universities, in part, to establish a stable backup of the books that Google digitized from their libraries. The new research center will initially focus on works that are no longer protected by copyright—roughly 2.3 million books in HathiTrust's 8-million-plus collection.

"Right now, the safe path is working with the public-domain materials," said John Wilkin, executive director of HathiTrust. "That's a phenomenally large amount of material." Researchers will not need to be affiliated with Hathi member institutions to access the center, Wilkin said. Reported in: Chronicle of Higher Education online, April 19. □

how much does your iPhone know about you?

Hoping to put to rest a growing controversy over privacy, Steven P. Jobs, Apple's chief executive, took the unusual step of personally explaining that while Apple had made mistakes in how it handled location data on its mobile devices, it had not used the iPhone and iPad to keep tabs on the whereabouts of its customers.

"We haven't been tracking anybody," Jobs said. "Never have. Never will." Jobs said that Apple would fix the mistakes in a free software update that it would release in the next few weeks.

Jobs, who is currently on medical leave, addressed the issue along with two Apple executives—Philip W. Schiller, the senior vice president of worldwide product marketing, and Scott Forstall, the senior vice president of iPhone software. A week before, two researchers reported that they had discovered a file in Apple's devices containing what appeared to be data of the locations visited by users over the previous twelve months. The discovery raised fears that Apple was tracking its users and prompted investigations by various European governments and demands for explanations from United States lawmakers.

The report came from a technology conference in San Francisco, where two computer programmers presented research showing that the iPhone and 3G versions of the iPad began logging users' locations a year ago, when Apple updated its mobile operating system.

After customers upgraded the software, a new hidden file began periodically storing location data, apparently gleaned from nearby cellphone towers and Wi-Fi networks, along with the time.

The data is stored on a person's phone or iPad, but when the device is synced to a computer, the file is copied over to the hard drive, the programmers said. The data is not normally encrypted; although users can encrypt their information when they sync their devices, few do.

To some privacy advocates, the storing of the data was a clear breach. "The secretive collection of location data crosses the privacy line," said Marc Rotenberg, executive director of the Electronic Privacy Information Center, a privacy policy organization based in Washington. "Apple should know better than to track iPhone users in this way."

Others said the discovery of the hidden file was unlikely to have a major practical impact on privacy and security.

"It is more symbolic than anything else," said Tim O'Reilly, a longtime technology pundit and founder of O'Reilly Media. "It is one more sign of how devices are collecting data about us and potentially sharing it with others. This is the future. We have to figure out how to deal with it."

Law enforcement officials can already get this type of location information from cellphone companies, O'Reilly said; there are, however, conflicting rulings in federal courts about whether they need a search warrant.

But sitting on a home computer, the data could now be more vulnerable to access by hackers or others, he said. And information about a person's locations over time

could be accessible to strangers if a phone or iPad was lost or if it was attacked by malware.

Jobs defended the timing of Apple's response to the controversy, saying that "rather than run to the P.R. department," it set out to determine exactly what happened. Apple also posted a statement on its Web site explaining how its system used the file to pinpoint a phone's location.

"The first thing we always do when a problem is brought to us is we try to isolate it and find out if it is real," he said. "It took us about a week to do an investigation and write a response, which is fairly quick for something this technically complicated."

He added, "Scott and Phil and myself were all involved in writing the response because we think it is that important."

Some privacy advocates who were harshly critical of Apple praised the company's response, saying it was a step in the right direction.

"Apple acknowledged a mistake and they fixed it," Rotenberg, of the Electronic Privacy Information Center, said. "That's a good thing."

Confirming speculation from some security researchers, Apple said in the statement posted on its Web site that the file in people's iPhones was not a log of their locations but rather "the locations of Wi-Fi hot spots and cell towers surrounding the iPhone's location, which can be more than one hundred miles away from the iPhone."

Apple said it used the data, which it called a cache, to calculate a device's location more quickly than through GPS satellites.

But Apple acknowledged that it had made mistakes, which it attributed to programming errors, in storing the data for a long time, keeping the file unencrypted and storing the data even when users had chosen to turn off location services.

"The system is incredibly complex," Forstall said. "We test this carefully but in such a complex system there are sometimes places where we could do better."

Apple said it would reduce the location cache on the iPhone to no more than seven days. The company also said it would stop backing up the cache onto people's computers and would delete the cache entirely when users turned off location services.

Apple also said that it updated its database of Wi-Fi hot spots and cell towers by using its customers' phones as sensors. But it said that it could not locate users based on the file on the phone, and that it collected the information in an anonymous and encrypted form. The company cannot identify the phone user from the data, it said.

While some security experts have known about the existence of the file for some time, the issue made headlines after the researchers reported their findings at a technology conference in San Francisco. Apple came

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domestic intelligence surveillance grew in 2010

By every available measure, the level of domestic intelligence surveillance activity in 2010 increased from the year before, according to a new Justice Department report to Congress on the Foreign Intelligence Surveillance Act.

"During calendar year 2010, the Government made 1,579 applications to the Foreign Intelligence Surveillance Court (hereinafter 'FISC') for authority to conduct electronic surveillance and/or physical searches for foreign intelligence purposes," according to the new report. This compares to a reported 1,376 applications in 2009. (In 2008, however, the reported figure—2,082—was quite a bit higher.)

In 2010, the government made 96 applications for access to business records (and "tangible things") for foreign intelligence purposes, up from 21 applications in 2009. And in 2010, the FBI made 24,287 "national security letter" requests for information pertaining to 14,212 different U.S. persons, a substantial increase from the 2009 level of 14,788 NSL requests concerning 6,114 U.S. persons. (In 2008, the number of NSL requests was 24,744, pertaining to 7,225 persons.)

While the 2010 figures are below the record high levels of a few years ago, they are considerably higher than they were, say, a decade ago. There is no indication that intelligence oversight activity and capacity have grown at the same rate.

A copy of the latest report to Congress, dated April 29, was released under the Freedom of Information Act. Reported in: Secrecy News, May 6. □

Christopher M. Finan receives 2011 FTRF Roll of Honor Award

Christopher M. Finan, president of the American Booksellers Foundation for Free Expression (ABFFE), longtime member of the Media Coalition and member and chair of the board of the National Coalition Against Censorship, is the recipient of the 2011 Freedom to Read Foundation (FTRF) Roll of Honor Award.

Finan has a distinguished career in both study and activism on behalf of the freedom to read. His work on behalf of free speech began in 1982 when he joined the Media Coalition as coordinator. Finan joined ABFFE in 1998. As President of ABFFE and member of a number of free speech advocacy groups, he has worked on a host of First Amendment issues, including federal, state and local legislation and litigation.

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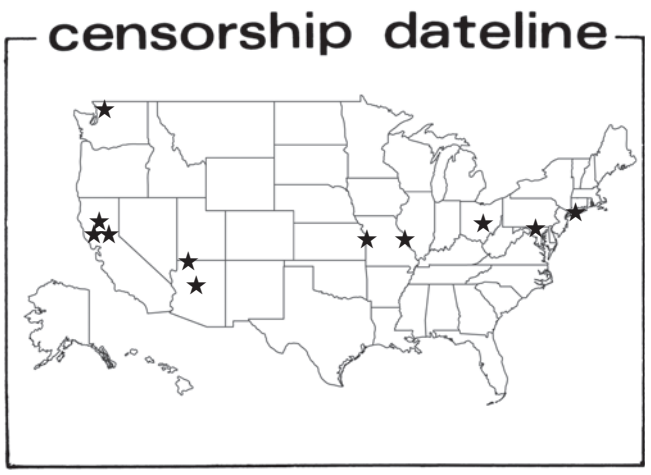


libraries

Colorado City, Arizona

Piles of books—perhaps thousands—intended to be used for a new library were burned over the weekend in this polygamous community that borders Utah. The large number of books being stored for a library were reportedly set ablaze April 16. Isaac Wyler, a member of the Colorado City community, said he went to survey the damage and discovered warm ashes and book fragments.

"There is a bonfire outside that clearly has books that have burned in it," Wyler said. "I can't say every book has been burned, because I haven't seen the inside. I can't get in there to see."

Bruce Wisan, who has been appointed by the state to oversee management of a Fundamentalist Church of Jesus Christ of Latter Day Saints trust, said the books were being housed in a old schoolhouse. "It was supposed to be a library," he said. "The trust wanted to deed it to the county, but (one man) went to the county supervisors and told them that we shouldn't be taking church property and there would be lawsuit."

It is believed that there were thousands of books in the building, including some which had been donated by Barnes and Noble Booksellers. Wyler said he is not sure how many books were destroyed as he could not gain access to the schoolhouse.

"My keys no longer fit the door anymore," he said. "They've blocked all the windows, you can't look in and see. My guess is there's not a book in this building."

In 2008, ex-FLDS member Stefanie Colgrove began gathering books from all over the country from book lovers who heard about her idea for a library in the FLDS communities of Hildale, Utah, and Colorado City. There hadn't been a public library in the towns for years. She moved back to the border towns to raise her family and decided she wanted a library for everyone. The rumor was that FLDS leader Warren Jeffs ordered the old library closed and all of the books disappeared, she said. Local community groups offered to help start a book drive and collect used bookshelves.

"We have a lot of people very excited about it in the community," Colgrove said at the time.

Jeffs, 55, had been the president and ecclesiastical head of the FLDS Church since 2002, but there was some question as to whether he had temporarily turned over the position over after Jeffs was convicted of rape as an accomplice in Utah in 2007.

In February 2010, Wendell Loy Nielsen was named president of the church in documents filed with the Utah Department of Commerce. He had long been a senior leader in the hierarchy of the southern Utah-based church. An attorney said the move was a legal formality that clarified that Nielsen had the authority to make decisions related to church business. But Nielsen resigned in January and Jeffs was reinstated to the position as president.

The Utah Department of Commerce placed an administrative hold on the two legal entities that make up the FLDS Church. The property in the twin towns is part of a larger management trust, which is currently under the control of the state.

An attorney for a polygamous sect said the bonfire was part of an effort to clean up an old building, not to burn thousands of books. "They thought they were performing a service by cleaning up this building," said Rod Parker, who represents the FLDS Church. "It's been a party place for teens to do, as my clients would say, 'immoral acts.' "

Members of the FLDS took the books, worth $15,000, out of the old schoolhouse where they were being stored, Parker said. The books were donated to the libraries in Cedar City and St. George, as well as the Deseret Industries thrift store in Cedar City, he said. Workers set the fire to burn debris cleared out of the building, including some books that were damaged beyond repair, Parker said. The book remnants in the ashes, however, led some to conclude that all the books have been burned in the fire.

Like most of the buildings in Colorado City and Hildale, the schoolhouse is part of the FLDS's property trust that was taken over by the state in 2005 amid

allegations of mismanagement. The court-appointed administrator of the trust, Bruce Wisan, said Colgrove had permission to use the building. No one else had asked him for permission to use it, or move the items stored inside. The FLDS members entered after changing the locks, he said. The Mohave County Sheriff's Office in Arizona is investigating the incident, but a spokeswoman said that no reports had been completed on it.

When the book-burning became public, Utah Attorney General's Office spokesman Paul Murphy, who personally donated thousands of volumes, called the incident a "hate crime."

"They were not their books to give away to burn or donate to anyone else ... that's theft," Murphy said. "[The FLDS] seem to be doing whatever they want."

But polygamy advocates charged that language goes too far. Mary Batchelor, a co-founder of Principle Voices, said that while she doesn't condone taking property without permission, tensions between FLDS members and nonmember residents are already high.

"It was very polarizing for accusations to be slung around when people really didn't know the truth of what's going on," said Batchelor, who works with Murphy on Safety Net, a committee that brings government workers together with people from Utah's polygamous communities. "Take a deep breath and wait for more information, assess the harm and the wrongdoing in a very calm and rational way."

Parker said there was a rush to judgment after the supposed book burning became public. "They jump to the most evil conclusions without bothering to find out the truth," he said. "It's unfair." Reported in: Deseret News, April 18, 23.

Phoenix, Arizona

A northeast Phoenix parent hopes to persuade Paradise Valley Unified School District officials to ban a book this fall from elementary schools. District leaders removed *Lovingly Alice* from the bookshelves at Quail Run Elementary School in May, after the mother of an 8-year-old fourth-grader complained about its sexual content.

Hilary Lockhart's two oldest daughters, first- and fourth-graders, attend Quail Run, a K-6 school in northeast Phoenix. Her two youngest daughters are 10 months and 2 years old.

"If you looked on the cover, it's just a very young cute girl on the cover," Lockhart said. "My (incoming) second-grader can pick this book up and think, 'This is a cute book.' There needs to be some sort of warning label."

Lovingly Alice, a novel by Phyllis Reynolds Naylor, is part of Naylor's "Alice" series. A description on publisher Simon & Schuster's website says the book is about Alice's experiences in fifth grade. She is upset about a friend moving away and is unsuccessful in finding a stepmother. When her brother breaks his leg, Alice discovers she feels better when she stops feeling sorry for herself and starts helping him.

The publisher makes no references to sexual activity or puberty, and it recommends the book to readers ages 9-12.

"I have not talked to one person who said, 'This is appropriate for a third-grader,' " Lockhart said. She said the book talks about sexual activity without addressing pregnancy and sexually transmitted diseases. "It basically is just throwing out a whole bunch of information to very young girls without accurate follow-up," she said.

Lockhart complained to Gerald Michaels, Quail Run's principal, after her fourth-grade daughter, Faith, checked out a book that discussed menstruation and sex. Lockhart said she gave the school nurse permission to discuss puberty with her daughter, but Faith, under friends' recommendation, had checked out the book before the nurse had a chance to address the subject.

"The school asks parents for permission for a nurse to talk about (puberty), but didn't ask me for permission to let my daughter read about it," she said. Lockhart said the school should have required parental permission before allowing the book to be checked out by fourth-graders.

"If she was in sixth grade, I don't think I would have taken it this far, because in sixth grade, they have sex education," she said.

After talking with district officials Lockhart decided she would begin a process to challenge the book at the beginning of next school year.

District spokeswoman Marty Macurak said Michaels will establish a committee of parents and teachers in the fall to discuss the book and its appropriateness. "The district does not have a restricted (book) list," she said. "The administrator and library media specialist at each school make choices that reflect their unique parent community. Every school community, every parent and every child is different, and these are value-influenced decisions. That's why each school community needs to hear all voices within that community and arrive at a decision based on consensus," she said.

While the book was pulled from the library at Quail Run Elementary, it is still available at other schools in the Paradise Valley School District.

"What's important in this district is that those decisions about what is appropriate for a particular child is made by the parent for that child. Every child is unique and different and every family has different values and beliefs about what's appropriate for their child," Macurak said.

Lockhart said librarians should also help determine which books are appropriate. "My child can't go and rent

a rated-R movie unless they're a certain age," Lockhart said. "We should have the same restrictions for books. And there's nothing on here that tells me there is sexual content that is advised for a 9-year-old. That, to me, is craziness."

Naylor's "Alice" series ranked second on the American Library Association's most-challenged list for 2000-09, behind the "Harry Potter" series. As with the series about a boy wizard, young readers flock to Naylor's books.

Girls can identify with the heroine, and the book speaks their language and describes their lives. Young readers who reviewed the book at amazon.com gave it a top ranking. "This book is the book for fourth-seventh graders because it talks about the real issues that girls in this age group face," one wrote.

That's also why parents dislike the books. "Parents, this book contains highly inappropriate graphic sex content," an Arizona mother warned in 2005. "And the *School Library Journal* says this book is for grades 4-6??? Not in my house." Reported in: Arizona Republic, May 17, 23; ktar.com, May 16.

Oak Harbor, Washington

An Oak Harbor mom is upset with a book her fifth-grade daughter brought home from school. It's a sex education book called *What's the Big Secret?* and is available at many public schools. "I can't even stand that she had already read this without me even knowing," said Jennifer Swedeoson.

Swedeoson had planned to have "the birds and the bees" talk with her ten-year-old daughter Kaleigh when she reached middle school. But that timeline changed when Kaleigh brought the book home from school April 28.

"I start flipping through, this is all right, but then it starts talking more about sex and I get into it and it's completely too graphic for her."

What's the Big Secret? shows how boys and girls are physically different, offers a lesson in reproduction and talks about "different types of touching."

"This is one of the first that definitely caught my eye, talking about masturbation when you are ten years old," Swedeoson said. "What do you need to read that for? I'm not so upset about the book itself. I think they should be sending home permission slips, making sure parents are aware that the book is there."

Swedeoson filed a formal complaint with her daughter's school district, Oak Harbor School District No. 201. Assistant superintendent Lance Gibbon said the book is available to all ages and has never required a parent's permission.

"This book been on the shelves for 10 years, at five different elementary schools," Gibbon said. "That's 2,500 students a year. That's a lot of kids that had opportunity and a lot of parents to give their input on it. This is the first time there's been any question about it."

Gibbon adds that fifth grade is when students in Washington state begin sex-ed classes. He said plenty of people research the material before it is put on the school library shelves.

"All of our books are reviewed by staff for age appropriateness, look at outside reviewers, their ratings, and quality of materials," Gibbon said. If a parent has a concern, the school welcomes discussion and feedback. Reported in: q13fox.com, April 29.

schools

Oroville, California

The American Civil Liberties Union of Northern California announced May 18 that it has notified the Oroville Union High School District that its Internet-filtering software has been improperly configured to block access to Web content geared toward the lesbian, gay, bisexual and transgender communities.

The ACLU has sent demand letters to school districts across the country as part of the organization's national "Don't Filter Me" initiative, which seeks to combat illegal censorship of LGBT educational information on public school computers.

Elizabeth Gill, attorney for the ACLU of Northern California, said the letter to the Oroville district was prompted by a complaint from Melina Zancanella, a junior at Oroville High School and president of its Gay-Straight Alliance club.

When Zancanella tried to look up ways the club could help stop teen suicide, she found the websites were blocked.

Gill said school officials often are unaware that software provided by filtering companies frequently censor LGBT-related materials that are not sexually explicit or pornographic. Reported in: Sacramento Bee, May 19.

Frederick County, Maryland

The Frederick County school board agreed May 11 to review a third-grade social studies textbook that critics say promotes a liberal agenda.

"I think there are overall concerns in the community about this," said board member April Fleming Miller, who suggested the board talk about *Social Studies Alive!* at its June 8 meeting.

The third-grade textbook has been a part of the county's social studies curriculum since 2004, and touches on geography, economics, history, citizenship and the environment. But some parents want it removed from classrooms because they say it does not teach facts objectively and tends to favor and promote liberal beliefs and ideologies on issues such as health care, public education and government.

That criticism brought the textbook up for discussion at the school board's curriculum committee. But school system staff defended the book, saying it is only one of 15 to 20 materials that teachers use to teach third-grade social studies. The majority of the board members on the committee felt their questions were resolved, and decided it wasn't necessary to ask for a full board discussion. But Miller (one of the three board members on the curriculum committee) was not comfortable with that, and asked her colleagues to look at the text.

"We should be proud of our curriculum. We should be proud of the textbooks," she told the board. Miller said parents had been concerned that the book was driven by a liberal agenda, and that it doesn't give enough factual information. It also tends to lead students toward taking a certain stance on issues such as health care, childcare and government, parents have said.

For example, the text explains how paying for health care can be a hardship for families in the United States, while families in other countries can go to the doctor without paying immediately or for a small fee. Immediately after, the text asks children if they think health care should be free. Though the textbook is not the only resource used for third-grade social studies, there is no guarantee that teachers would not use it in their classroom, critics have said.

For the board to put the textbook on their agenda, Miller needed support from at least two more board members and Donna Crook and James C. Reeder Jr. agreed to bring the book up for discussion. Reeder said he has not read the book, but he has already heard about it on the radio and from concerned community members. "I was interested in hearing more about this," said Reeder. "I am reading it now."

Board member Angie Fish, however, said she wanted to make sure that when the book comes up for discussion, staff can be available to answer questions, explain how the book was selected, and tell the board exactly how teachers use the book and other resources in their lessons.

"If we are going to bring it to the full board, I would like the board to have the full information," she said.

Fish, who sits on the curriculum committee with board members Miller and Kathryn Groth, said the committee already received a detailed presentation of the textbook from James Gray, the school system's social studies curriculum specialist for elementary schools.

Gray told the committee that Frederick County teachers use a variety of resources to teach their lessons. Rather than following a single textbook, teachers follow the goals and objectives of the social studies curriculum the Frederick County school board approved in 2008, Gray said.

Fish and Groth said they were satisfied with that information, and decided not to bring the book for discussion to the full board. Instead, they asked Gray to come back to the committee and explain in detail how often teachers may choose to use the textbook. But now that the text will be up for discussion by the full board, Fish asked that Gray include that presentation when he comes to the board in June.

Fish said that she doesn't want the board to replace the book now and have to replace it again in the next year or two when the state comes up with the new Common Core standards – a nationally coordinated initiative that aims to ensure that students around the country are shooting for the same goals and requirements.

Parents who have criticized the textbook were pleased. "It's a good step forward," said Cindy Rose of Knoxville, a parent who filed a formal request with the school system to remove the textbook.

Rose, whose 9-year-old daughter Grace is a third-grader at Valley Elementary, had raised questions about the book for months. She even appeared on Glenn Beck's television show on Fox News where she talked about the book and her concerns that it tends to teach more beliefs and ideological views than facts and data.

"If it's so inconsequential, why don't they get rid of it?" Rose asked the board. "It is very much social engineering." Reported in: Maryland Gazette, May 12.

McConnelsville, Ohio

Students at Morgan High School will not get to see the play *To Kill a Mockingbird* after the superintendent decided to cancel a planned performance. Lori Snyder-Lowe, superintendent for Morgan Local School District, said she received several calls from parents concerned about the play because it contains a racial slur. The play was scheduled to be performed for students in a week.

Snyder-Lowe said she made her decision after calling other school districts and learning they had not allowed the play at school either.

Bruce Revennaugh, secretary for the Zane Trace Players, said he was disappointed after he learned he would not be producing the play for the students. "The superintendent said we would have to either take the word out or we couldn't do it," Revennaugh said.

The book on which the play was based was written in 1960 by Harper Lee. It is told from the perspective of the character Scout, who grew up in the South and whose father defends a black man at a rape trial. One of the most famous quotes from the book is Scout's father, Atticus, telling her: "You never really understand a person until you consider things from his point of view ... until you climb into his skin and walk around."

Revennaugh said he contacted the publishing company for permission to exchange the word for another, and he was refused.

The company receives requests "every once in a while" to remove the word, said Chris Sergel, vice president of Dramatic Publishing, but making someone uncomfortable is not a sufficient reason to change a vital piece of American literature.

"Being uncomfortable with history is not means to change it," Sergel said. "We've always denied these requests. People need to figure out how to confront issues."

Revennaugh said he thinks an opportunity to have an open dialogue about issues was lost. "The students had just finished reading it," Revennaugh said. "I think it would have been an excellent opportunity to have a discussion about how things were then and are now. My kids are amazed that prejudice even exists now. Maybe this could have changed a person's opinion or attitude. We'll never know because the opportunity was lost."

Snyder-Lowe said permission slips were sent home to the students who were going to read the book, stating there were racial slurs in it. "We followed precedent set by other schools," Snyder-Lowe said.

Snyder-Lowe said she called Olentangy School District and was told they had taken the racial slur out of the play, which was presented in November. But spokeswoman Karen Turett said that the district allowed the play to be performed as written. Terry Martin, superintendent of Zanesville City Schools, said they have used the book for freshmen and never have had any issues.

"There are obviously certain things that you want to keep out of the school system," Martin said. "But this is not one I'm aware of."

James L. Hardiman, the legal director for the Ohio ACLU, said he finds the school's decision "very, very troubling."

"This is like killing the messenger," Hardiman said. "This means the message is lost." Hardiman said being an African-American, he finds it disturbing when he hears people might be offended by the book.

"I read it, and I wasn't offended," Hardiman said. "You have to consider the times the book is depicting. When it was written, it was the height of the civil rights movement. I believe this should be mandatory reading for students. We've got to remember what it was like then and know what it could be become again if left unchecked."

Hardiman said he applauds the publishing company for refusing to change or omit the word. "Today, racism is hidden in the closet," he added. "In the 1960s, it was in your face. Now it's more subtle. Banning this topic, the school officials are denying students the opportunity to understand the history of intolerance and injustice in our country and how it may be relevant to their lives today."

Hardiman said the ACLU would continue to monitor the school's reaction. "Hopefully, this can be resolved quickly," he said. Reported in: Zanesville Times-Reporter, May 13.

Bluewater, Ontario

Several parents want an award-winning novel they say is filled with violent, exploitive sexual references removed from Bluewater classrooms. Timothy Findley's *The Wars*, which won the Governor General's Award for fiction in 1977, is "filled with adult content," Tiverton parent Carolyn Waddell told trustees.

"The book includes a number of very explicit and detailed descriptions of sexual encounters, most of them exploitive and violent," Waddell said. She objected especially to details about the hero's visit to a "whorehouse" and to a vivid description of the young Canadian soldier's gang rape by fellow soldiers.

With several other parents supporting her, Waddell asked that trustees review the book she said is "inappropriate to be presented to a class of young people."

A student trustee and a student senator who have studied the book this school year disagreed. In interviews after the board meeting, both said Grade 12 students are adults who should face rather than be shielded from such realities.

"These things did happen in World War I. The process of coming to terms with that is valuable and necessary," said Janelle Taylor, whose university level Grade 12 English class at Kincardine District is currently studying *The Wars*. "It does deserve a place in the classroom. I think students need to understand that these (things) actually do happen," Taylor said.

Nicola Bruce, a student at Saugeen District, studied the novel last semester. "In this novel, there definitely are controversial, very topical, sensitive issues," Bruce said. "But the novel itself is by no means offensive, not whatsoever. You study the issues and discuss it in a healthy classroom environment to understand big topics in a very healthy way. I think any teacher that wishes to teach it still in our school board absolutely has a right to, yes."

Waddell first raised questions over Findlay's novel with board officials last October, after her daughter highlighted concerns about its content. She told trustees the book is "inconsistent with" several board polices, including the human rights policy, and said such material may traumatize some students.

The small group of parents wants trustees to review the book immediately and also want board officials to publish a list of curriculum materials, with descriptions for parents of all books used in classrooms.

Waddell also said since board staff have not reviewed the book as requested, she brought the complaint to the trustees, urging the board to make sure the book complies with board policy.

"You may be concerned that we are aiming for censorship here. We are not. We are simply asking for responsible education in our school system."

Bruce said she believes the parents have a right to raise concerns, but the book and its difficult subject

matter belongs on the study list. "We talk about two world wars and the Holocaust. These issues are real, too, and horrifying. Many students come home and confide in their parents about sensitive issues but we still have to learn them," Bruce said. "I'm moving to Toronto in September to study world issues. I want to learn about this stuff and I have every right to."

Alana Murray, the board's superintendent of secondary education, said after the meeting this was the first request she recalls within the Bluewater board for a ban on this, or any other book taught in its schools. In 1991, a student in Lambton county asked school officials there to remove the book from its English curriculum, arguing it encouraged students to accept homosexuality. That board upheld the use of the book at the Grade 13 level.

The Wars was among 26 challenged or banned books released in February 2010 by the University of Victoria to recognize the 26th anniversary of Freedom to Read Week in Canada.

Murray said *The Wars* is not a compulsory book but has for many years been on the list of books English teachers may choose to teach to meet the objectives of the Ontario Grade 12 curriculum. A board textbook review committee is developing a new criteria for reviewing materials on that list, she said. "At this point there is no recommendation from those staff to remove any specific texts from that list," Murray said. Reported in: Shoreline Beacon, May 24.

university

Kansas City and St. Louis, Missouri

Videos posted by the conservative blogger Andrew Breitbart appear to have ended the teaching career of an adjunct at the University of Missouri -- even as university officials issued a statement backing the contention of the two instructors of the labor studies course that their comments in the class had been edited to present an "inaccurate and distorted" picture of what was said.

Breitbart posted the videos on his Big Government blog and, based on the recordings, called the course "advanced thuggery." In the video, the two instructors can be heard making numerous seemingly positive statements about the use of violence or threatened violence in labor-management relations. The course is taught by one instructor at the university's Kansas City campus, Judy Ancel, and another at the St. Louis campus, Don Giljum. With a video link, the professors and students at the two campuses interact in class -- and the recordings have been available to students through the learning management system used in the course. The videos posted by Breitbart are clearly from different class sessions, as the professors appear in different clothing.

Both Ancel and Giljum said that their statements in the videos were a mixture of different teaching techniques, including describing how labor leaders felt during certain periods of time, directly quoting specific individuals (whose views they did not necessarily share), and intentionally taking an extreme position to prompt class discussion.

They said that the full recordings would make this clear, and that they would like the complete class sessions released. The problem, they said, was that the recordings show identifiable students as well as the instructors (which is the case in the excerpts posted by Breitbart, too), so the university can't just post the recordings without violating student privacy rights.

On April 28, Gail Hackett, provost of the Kansas City campus, issued a statement that backed the instructors' description of the class, based on administrators' review so far of the 18 hours of available video (of which Breitbart's two excerpts are together under 15 minutes). "From the review completed to date, it is clear that edited videos posted on the Internet depict statements from the instructors in an inaccurate and distorted manner by taking their statements out of context and reordering the sequence in which those statements were actually made so as to change their meaning," Hackett said. "Such selective editing is disturbing and the release of students' images without their permission is a violation of their privacy rights." (University officials assume that a student either gave Breitbart a copy of the video of the class or provided access.)

Hackett's statement went on to "underscore our commitment to the importance of academic freedom, freedom of speech and the free-flowing discussion of challenging topics in our courses," as well as "the serious responsibilities this places on us to ensure a balanced perspective is offered to our students within our curriculum."

Hackett added that "[i]n this particular case, we also affirm our belief that studying labor unions, their history, and their role in society is an important subject given the role they have played and continue to play in the United States and the world. As a result, we continue to review the appropriate place for such an offering within our curriculum."

This was not the first time that he has been accused of selective editing. It was Breitbart who posted the excerpt of a talk by Shirley Sherrod, then an Agriculture Department official, purporting to show her expressing anti-white racial attitudes, setting off a furor that led to her resignation. The subsequently released video of her complete talk showed how she was referencing long-ago attitudes and in fact gave a moving call for racial reconciliation.

Breitbart may be on the lookout for other academics. Appearing on Sean Hannity's show on Fox, he said that "we're going to take on education next, and go after the teachers and union organizers."

The American Association of University Professors released a statement April 28 denouncing Breitbart's tactics, and contrasting the alleged calls to violence in the videos with the damage that the association said is really taking place. "The violence that is being done ... is to the academic freedom and employment security of the instructors, and to the privacy and safe classroom environment of the students, some of whom speak on the video clip," said the AAUP statement. "When students voice their views in class, they should not have to fear that their comments will be spread all over the Internet. When faculty members rightly explore difficult topics in class, they should not have to fear for their jobs or their lives."

While the university's statement endorsed academic freedom, it also noted that during "the course of our review the past couple days, UMSL has accepted the resignation of its lecturer." The St. Louis campus declined to elaborate on that resignation, but Giljum said that he was told by a dean that she needed him to resign, and had been told by her higher-ups to get his resignation.

Noting that he is an adjunct, Giljum said that "they could care less about me. I am an at-will employee, and they are focused on preserving funding for the university."

He said that the university sent a message by asking him to resign in the wake of the videos. "Teachers here are no longer going to be able to express comments, theories or counter-positions or make statements to force students to push back and critically challenge the comments and statements of the teacher," he said.

Teaching in such an environment, he said, "I would be guarded about what I would say, and students would be guarded as well."

Ancel, the other instructor, said that she works on annual contracts and that the university has not taken any action against her. She also released a statement in which she explained the context behind some of the quotes shown in the video.

For example, she noted that one of her quotes in the Breitbart video is: "violence is a tactic and it's to be used when it's the appropriate tactic." Here is what she said really happened: "After students had watched a film on the 1968 Memphis sanitation workers' strike and the assassination of Martin Luther King, they were discussing nonviolence. I said, 'One guy in the film ... said 'violence is a tactic, and it's to be used when it's the appropriate tactic.' " In this instance, she said, "Breitbart's editing has literally put words in my mouth that were not mine, and they never were mine."

Both Ancel and Giljum said that a course about the history of the labor movement would of necessity discuss violence. Ancel said in her statement: "Any examination of labor's past would be incomplete without discussion of violence (which for the most part was directed at workers), and analysis of its roots. At no time did my co-instructor, Don Giljum, nor I advocate violence."

While Ancel's statement said that complete review of the tapes would vindicate both instructors, she added that the videos had caused real pain, "ugly" threats and the loss of Giljum's job. "These videos are no idle prank. They do real harm," she said.

She also stressed that the invasion of privacy extended to her students -- some of whom want to learn about labor without telling their bosses, and who are visible in the videos. "These videos are an attack on higher education and its mission to working adults, putting labor education programs at risk. They create fear and have an enormously chilling effect on freedom of thought and expression," her statement said. "Sadly, they have already shattered the very positive atmosphere of trust and openness that we worked so hard to create in this class. One of my students told me, with some discomfort, 'My boss watches Fox News.'" Reported in: insidehighered.com, April 29.

book

Santa Clara, California

An educational organization canceled an event planned for a Mahatma Gandhi biography that was banned in part of India after reviews hinted the father of the nation's independence had a homosexual relationship. The event, in honor of Pulitzer Prize-winner Joseph Lelyveld's *Great Soul*, was to have been hosted April 13 in Santa Clara by the Foundation for Excellence, a nonprofit that provides scholarships for students in India.

"We didn't want to be involved with any controversy because that is not the purpose of our organization -- we are not a literary society that encourages debate and discussion on different authors and their books," foundation spokesman Abhu Shukla said. "So, it is correct that we canceled because of the controversy."

Although not out yet in India, *Great Soul: Mahatma Gandhi and His Struggle With India* was banned March 30 by a western state there after reviews suggested Gandhi had a homosexual relationship with a German named Hermann Kallenbach. More bans have been proposed in India, where homosexuality was illegal until 2009 and still carries social stigma.

The book was published in March in the United States by Alfred A. Knopf, whose spokesman Paul Bogaards said he knew of no problems for events scheduled in New York, Los Angeles, Boston and other cities.

The author has said the book, about Gandhi's struggle for social justice and the evolution of his social values, is being misinterpreted. He said his work doesn't allege Gandhi was gay or bisexual but that "he was celibate and deeply attached to Kallenbach. This is not news."

Bogaards called the foundation's decision to cancel the book event "shameful" and "one that reeks of censorship."

"Their decision to cancel is based on misinformation, not facts," Bogaards said. "Mr. Lelyveld is a Pulitzer Prize-winning journalist, and it is the foundation's great loss that their members will be denied an opportnity to hear him." Reported in: Associated Press, April 1.

periodical

Brooklyn, New York

An ultra-Orthodox Jewish newspaper has apologized for deleting Hillary Clinton from a photo of President Obama's national security team, even as it asserted a First Amendment right to do so.

The Hasidic newspaper *Di Tzeitung* published a photo of Obama and his team watching the raid on Osama bin Laden's compound, but two women were missing—the secretary of state and the counterterrorism director. The White House bars alteration of photos released to the press.

Di Tzeitung apologized May 9, saying it should not have altered the photo. The newspaper doesn't publish photos of women "because of the laws of modesty" and it is not intended to disparage women, its statement said.

Yet the Yiddish-language newspaper asserted a right to make the change. "The First Amendment to the Constitution guarantees freedom of religion," the statement said. "That has precedence even to our cherished freedom of the press!"

"In accord with our religious beliefs, we do not publish photos of women, which in no way relegates them to a lower status," the paper's statement said. "All Government employees are sworn into office, promising adherence to the Constitution, and our Constitution attests to our greatness as a nation that is a light beacon to the entire world. The First Amendment to the Constitution guarantees freedom of religion. That has precedence even to our cherished freedom of the press! … Because of laws of modesty, we are not allowed to publish pictures of women, and we regret if this gives an impression of disparaging to women, which is certainly never our intention. We apologize if this was seen as offensive."

News of the altered photo broke May 6 when Shmarya Rosenberg, 52, posted a quick piece on his blog Failed Messiah. Rosenberg, of St. Paul, Minnesota, said he wasn't surprised by the photo doctoring and only posted something about it because "it was a slow news day."

A former ultra-Orthodox Jew, Rosenberg has been writing about the ultra-Orthodox community—mostly about crime and what he dubbed "strange media"—for seven years. He said the newspapers in that community have become "increasingly strange with their censorship of women's faces and women's bodies" over the past few years.

He said readers of the Yiddish-language paper used to see photos of rabbis with their wives and that there was then a time when the women were blurred. Now, they're just not there.

Robin Bodner, executive director of the Jewish Orthodox Feminist Alliance, said "we educate and advocate for increased ritual, spiritual and leadership opportunities for women within Jewish law. And sometimes we get the feeling that men wish women were not even in the room. This picture by [an ultra-Orthodox] newspaper goes a step further by revising history to remove important women leaders from the historic room in which they were present. It reminds us of how much work is still to be done!" Reported in: cnn.com, May 9.

art

San Rafael, California

San Rafael artist Sylvia Cossich Goodman is up in arms because her painting of a nude was ejected from a Civic Center art exhibition because it offended a county employee.

"Apparently one person working at the Civic Center is so upset about my nude painting that she went straight to human resources and made a big stir to have my painting removed," Goodman said, decrying "censorship at the Civic Center."

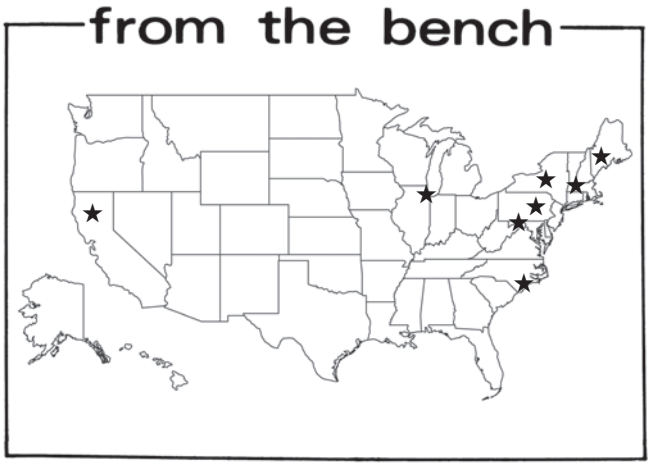
Mona Miyasato, chief assistant county administrator, noting that art is in the eye of the beholder, said an employee who was offended complained after the exhibit went up in early April "about being accosted by the painting every day in the work environment" because her office was near the first-floor gallery.

Because "employees must not feel we've created a hostile work environment," the artist was asked to pick up the painting, Miyasato said. The impressionistic painting depicted a full-frontal nude. Several other works involving nude figures remain on display, including a provocative photo-style print.

Asked what would happen if an employee became offended by a photo in a display, for example, of war casualties, Miyasato reflected, saying, "I'll have to think about that."

Colleen Proppe, membership director of the Marin Arts Council, which coordinated the exhibit, said the council's annual "member show" at the Civic Center involves artists who submit one piece each. "We did remove one painting at the request of the Civic Center staff," Proppe said. "The Civic Center is a public thoroughfare, in which 8-year-old children come through on field trips. As a mother of twins who both did the field trip with their public school this year, I can understand

(continued on page 164)



U.S. Supreme Court

The Supreme Court on April 4 let stand an Arizona program that aids religious schools, saying in a 5-to-4 decision that the plaintiffs had no standing to challenge it.

The program itself is novel and complicated, and allowing it to go forward may be of no particular moment. But by closing the courthouse door to some kinds of suits that claim violations of the First Amendment's ban on government establishment of religion, the court's ruling in the case may be quite consequential.

Justice Elena Kagan, in her first dissent, said the majority had laid waste to the doctrine of "taxpayer standing," which allows suits from people who object to having tax money spent on religious matters. "The court's opinion," Justice Kagan wrote, "offers a road map—more truly, just a one-step instruction—to any government that wishes to insulate its financing of religious activity from legal challenge."

The decision divided the court along the usual ideological lines, with the three other more liberal members—Justices Ruth Bader Ginsburg, Stephen G. Breyer and Sonia Sotomayor—joining the dissent.

The Arizona program gives taxpayers there a dollar-for-dollar state tax credit of up to $500 for donations to private "student tuition organizations." The organizations are permitted to limit the scholarships they offer to schools of a given religion, and many of them do.

The usual rule is that plaintiffs who merely object to how the government spends their taxes do not have standing because they have not suffered a sufficiently direct injury. But the Supreme Court made an exception for religious spending by the government in 1968 in Flast v. Cohen.

The issue that divided the majority and the dissenters in the current case was whether granting a tax credit was the functional equivalent of collecting and spending tax money. Writing for the majority, Justice Anthony M. Kennedy said the two things were very different.

"Awarding some citizens a tax credit allows other citizens to retain control over their own funds in accordance with their own consciences," Justice Kennedy wrote for himself, Chief Justice John G. Roberts Jr. and Justices Antonin Scalia, Clarence Thomas and Samuel A. Alito Jr.

The plaintiffs' position, Justice Kennedy wrote, "assumes that income should be treated as if it were government property even if it has not come into the tax collector's hands." But, he added, "private bank accounts cannot be equated with the Arizona State Treasury."

Justice Scalia, joined by Justice Thomas, wrote separately to say he would have gone further and eliminated the exception carved out in the Flast decision entirely.

In her dissent in the case, Arizona Christian School Tuition Organization v. Winn, Justice Kagan said the majority's position was an elevation of form over substance. "Taxpayers experience the same injury for standing purposes," she wrote, "whether government subsidization of religion takes the form of a cash grant or a tax measure."

She offered examples. "Suppose a state desires to reward Jews—by, say, $500 per year—for their religious devotion," she wrote. Would it matter to taxpayers offended by the practice whether the reward came in the form of a government stipend or a tax credit?

"Or assume," she wrote, "a state wishes to subsidize the ownership of crucifixes" in one of three ways. It could purchase them in bulk and distribute them; it could reimburse buyers with a check; or it could pay with a tax credit.

"Now, really—do taxpayers have less reason to complain if the state selects the last of these three options?" Justice Kagan asked.

Justice Kagan said the majority's opinion was particularly surprising because the court had never thought the point even worth arguing over. "To the contrary: We have faced the identical situation five times—including in a prior incarnation of this very case!—and we have five times resolved the suit without questioning the plaintiffs' standing," she wrote.

Justice Kagan acknowledged that people would sometimes continue to have standing of the more traditional sort to challenge government spending on religion. In other cases, though, she wrote, the decision

"will prevent federal courts from determining whether some subsidies to sectarian organizations comport with our Constitution's guarantee of religious neutrality." Reported in: New York Times, April 4.

Prison inmates may be left without an effective remedy for violations of their religious freedom as a result of a Supreme Court ruling April 20, civil rights advocates say.

The Court ruled in Sossamon v. Texas that states may not be sued for money damages under the Religious Land Use and Institutionalized Persons Act, a 2000 federal law aimed in part at protecting the First Amendment right of prisoners to practice their religion.

The ruling still allows inmates to win injunctions that would stop or change policies that impinge on religious freedom. But critics say that without the possibility of monetary damages, states will have little incentive to change their ways or punish officials for their actions. Critics argue that without damages it will be easy for states to avoid the scrutiny of courts by transferring or releasing prisoners or by slightly modifying policies to make cases moot.

"The ability to freely practice the religion of one's choice is a fundamental constitutional right and not one that is taken away just because you are incarcerated," said Steve Shapiro, legal director of the American Civil Liberties Union. "Today's decision will too often leave state prisoners without any remedy for serious violations of their religious rights. And prison policies that violate religious rights will in many cases escape judicial review entirely."

J. Brent Walker, executive director of the Baptist Joint Committee for Religious Liberty, also criticized the decision. "We are disappointed in the majority's pinched view of what was a clear congressional intent to provide prisoners broad protection for religious liberty and a robust remedy for its violation, including monetary damages."

The 6-2 ruling came in the case of Texas inmate Harvey Sossamon III, who claimed that prison policies illegally kept him from attending religious services, or worshiping in the prison chapel, while he was under disciplinary restrictions. He filed suit under RLUIPA, which states that inmates may seek "appropriate relief" when they challenge undue burdens on religious freedom imposed by state institutions that receive federal funds. At both the trial court and appeals court level, Sossamon's suit was dismissed.

Justice Clarence Thomas, writing for the majority, upheld the lower court judgments, asserting that when states receive federal funds for prisons, they do not waive their sovereign immunity from suits for money damages. Stressing the importance of state sovereignty and "dignity," Thomas said Congress cannot impose damages lawsuits against states without doing so explicitly. The phrase "appropriate relief," in Thomas's view, is "open-ended and ambiguous" and "is not the unequivocal expression of state consent that our precedents require."

When multiple interpretations are possible, Thomas said, he would not pick the one that invades state sovereignty.

Justice Sonia Sotomayor dissented, joined by Justice Stephen Breyer. In her view, the availability of money damages is "self-evident" under Court precedents. She also said that excluding money damages "severely undermines" the intent of Congress in passing the law to protect religious exercise as much as possible.

Former Texas solicitor general James Ho, who argued and won the case for Texas, disputed the claim that the ruling would weaken protection for religious rights. He said states would be quicker to fix allegedly flawed prison policies if they didn't have to litigate over money damages.

Ho also applauded the decision as a victory for openness because it requires Congress to be unambiguous when it passes laws affecting states. "It is a welcome and timely reminder by a broad majority of the Court that Congress must speak clearly and not hide the ball when it comes to abrogating state sovereignty," said Ho.

Justice Elena Kagan recused herself in the case because of her earlier involvement as solicitor general. Reported in: firstamendmentcenter.org, April 21.

The Obama administration is asking the Supreme Court to reinstate a policy that allows federal regulators to fine broadcasters for showing nudity and airing curse words when young children may be watching television.

In court papers filed April 21, the administration called on the high court to review appeals court rulings that threw out the Federal Communications Commission's rules against the isolated use of expletives as well as fines against broadcasters who showed a woman's nude buttocks on a 2003 episode of ABC's "NYPD Blue."

Last year, the U.S. Court of Appeals for the Second Circuit in New York threw out the FCC policy, saying it was unconstitutionally vague and left broadcasters uncertain of what programming the agency will find offensive.

When the FCC first tried to apply the rule—which was adopted in 2004, under then-Chairman Kevin Martin—broadcasters balked, tying the FCC up in litigation that has left it essentially unable to enforce its indecency rules over the past 7 years.

"Right now, if you are a broadcaster that has an indecency complaint filed, you can't get anything done," said Marissa Repp, whose Repp Law Firm represents stations before the FCC.

Broadcasters hope the Supreme Court will agree with the Second Circuit and throw out the fleeting expletive rule. "We believe that the Second Circuit decisions were

correct and should not be overturned," ABC said in a statement.

But even if the high court rules to keep the rule, broadcasters might be OK with that, too, if only because then they'd know what the rules are.

"I think most broadcasters would rather the Supreme Court look at it now because the other option, to start all over on indecency policy, would be years down the road." said Kurt Wimmer, a partner with Covington & Burling, whose clients include the National Association of Broadcasters, Gannett, and The Washington Post Co. Reported in: Associated Press, April 21: Adweek, April 25.

The Obama administration has asked the Supreme Court to resolve a conflict among federal appellate courts over the need for a warrant before attaching a GPS device to a suspect's vehicle to covertly track a person. In fact, the Justice Department said that a person traveling on public roads has "no reasonable expectation of privacy" in his movements, even if 'scientific enhancements' are used to help law enforcement with the tracking.

Last year, the U.S. Court of Appeals for the D.C. Circuit reversed the conviction of a drug dealer, Antoine Jones, since the government had violated Jones' privacy by covertly tracking his movements by GPS, and then using that data for search warrants of those locations to find drugs. The Justice Department said that the government surveillance by GPS in the Jones case "raises no concerns about mass, suspicionless GPS monitoring."

Despite three other courts of appeal ruling that law enforcement does not need a warrant to use GPS tracking on a vehicle, the D.C. appellate court did not agree. "Continuous human surveillance for a week would require all the time and expense of several police officers, while comparable photographic surveillance would require a net of video cameras so dense and so widespread as to catch a person's every movement, plus the manpower to piece the photographs together," the court wrote. "A reasonable person does not expect anyone to monitor and retain a record of every time he drives his car, including his origin, route, destination, and each place he stops and how long he stays there."

But the Justice Department said the appellate ruling "would prevent a widespread police practice of GPS-aided surveillance." The legal brief states, "Prompt resolution of this conflict is critically important to law enforcement efforts throughout the United States. The court of appeals' decision seriously impedes the government's use of GPS devices at the beginning stages of an investigation when officers are gathering evidence to establish probable cause and provides no guidance on the circumstances under which officers must obtain a warrant before placing a GPS device on a vehicle." Reported in: Computer World, April 20.

Before pharmaceutical company marketers call on a doctor, they do their homework. These salespeople typically pore over electronic profiles bought from data brokers, dossiers that detail the brands and amounts of drugs a particular doctor has prescribed. It is a marketing practice that some health care professionals have come to hate.

"It's very powerful data and it's easy to understand why drug companies want it," said Dr. Norman S. Ward, a family physician in Burlington, Vermont. "If they know the prescribing patterns of physicians, it could be very powerful information in trying to sway their behavior—like, why are you prescribing a lot of my competitor's drug and not mine?"

Marketing to doctors using prescription records bearing their names is an increasingly contentious practice, with three states, Maine, New Hampshire and Vermont, in the vanguard of enacting laws to limit the uses of a doctor's prescription records for marketing.

On April 26, the Supreme Court heard arguments in a case, Sorrell v. IMS Health, that tests whether Vermont's prescription confidentiality law violates the free speech protections of the First Amendment.

The case is being closely watched not only by drug makers and data collection firms, but also by health regulators, doctors and consumer advocates who say the decision will have profound implications for doctors' control over their prescription histories, and for information privacy, medical decision-making and health care costs.

Vermont's attorney general, William H. Sorrell, petitioned the court to review the case after three leading data collection firms including IMS Health, a health information company, and the Pharmaceutical Research and Manufacturers of America, a drug industry trade group, challenged the state statute. Although the federal district court in Vermont originally upheld the law, an appellate court reversed the decision last November.

The federal government, the attorneys general of several dozen states, American Association of Retired Persons, professional medical associations, privacy groups and the New England Journal of Medicine have filed briefs in support of Vermont's law. The National Association of Chain Drugstores, the Association of National Advertisers and news organizations like Bloomberg and The Associated Press have filed briefs aligning themselves with the data firms.

The concern over marketing based on doctor-specific prescription records revolves around the argument that it makes commercial use of private health treatment decisions—initiated in nonpublic consultations between doctor and patient, and completed in government-regulated transactions with pharmacists.

The data has become more available because pharmacies, which are required by law to collect and maintain detailed files about each prescription filled, can sell records containing a doctor's name and address, along with the amount of the drug prescribed, to data brokers.

(The records are shorn of patient names and certain other personal details covered by the Health Insurance Portability and Accountability Act, known as HIPAA, the federal legislation governing a patient's privacy.) Data brokers in turn aggregate the records for use in medical research and marketing.

Drug makers spent about $6.3 billion on marketing visits to doctors in 2009, the last year that such figures were available, according to IMS Health. Access to a doctor's prescription history, drug makers say, helps ensure that information about the latest prescription drug options quickly reaches specialists who treat particular conditions.

But some federal regulators and medical societies argue that drug makers are simply mining the data to identify and go after the doctors who would be most likely to prescribe the latest, most expensive brand-name medicines—driving up health care costs and exposing patients to newer drugs whose side effects may not yet be fully known.

Vermont enacted its prescription confidentiality law with the idea that drug makers do not have an inherent right to a doctor's identifiable prescription information for use in marketing because the data originated in highly government-regulated, nonpublic health care transactions, said Sorrell, the Vermont attorney general.

"Does 'Ajax Incorporated' have a constitutional unfettered right to the data for commercial purposes," Sorrell said, "or is it legitimate to give the doctor who is writing the prescription a say over whether that information should be used for marketing?"

Although the state law does not inhibit pharmaceutical sales representatives from marketing to doctors in their offices, he said, it does give doctors the right to consent before their prescribing information may be sold and used for marketing. If a doctor does not agree, he said, pharmacies must remove or encrypt the doctor's name, just as they do for patients, before they sell this type of record for promotional use.

Even if the Supreme Court were to find that the law infringes on free speech, Sorrell added, the justices could still uphold the law on the grounds that the state has a legitimate interest in containing the higher medical costs and safety risks that can be associated with the newest drugs.

But industry representatives contend that Vermont should not be allowed to cherry-pick certain approved uses for the records in question while restricting those that conflict with what the law's opponents say is the state's apparent agenda: promoting less expensive generic drugs in an effort to lower health care costs.

Vermont allows those records to be used in research and by law enforcement, said Thomas C. Goldstein, a lawyer representing IMS Health. Moreover, he said, drug makers are allowed to buy the very same records so they can identify doctors whose patients might be good candidates for clinical trials or communicate drug safety updates.

"The one exception is that drug companies cannot use the data to combat the insurers' and the state's messages about their products," Goldstein argued.

He added that pharmacies obtain the information through business transactions that are no different than any other, making the physician records no more private than stock quotes or commodity prices. "It's all data," he said, "and it's all protected by the First Amendment."

Moreover, such laws reduce the ability of drug makers to quickly communicate with specialists about new drugs for rare diseases, a situation that could make it prohibitive for, say, a small biotechnology company with a tiny sales force to market a breakthrough medication, said Randy Frankel, the vice president for external affairs at IMS Health.

"Without the data, you might visit 1,000 physicians to identify the ten whose patients might most benefit," Frankel said. "With the data, you would go to the ten."

But some consumer advocates say the real issue in the case is the confidentiality of information that people submit in government-regulated transactions that they would not otherwise make public.

"If the court is not going to protect personal and confidential health records," said Wells Wilkinson, a staff lawyer at Community Catalyst, a nonprofit group that filed a brief in support of Vermont, "how could any consumer transaction be protected?" Reported in: New York Times, April 24.

library

Redding, California

Civil libertarians leafleted the Redding library May 4, just hours after a Shasta County judge temporarily blocked city restrictions on pamphleteering around the building.

Superior Court Judge Monica Marlow issued the order after the American Civil Liberties Union of Northern California and the North State Tea Party Alliance sought immediate action to keep the leafleting policy from going into effect before a court rules on its constitutionality. The policy requires pamphleteers to stay in a 66-square-foot area just left of the library entrance when viewed from outside.

The city also prohibits harassment, windshield leafleting, donation solicitation and commercial advertising in the free speech zone under the policy, adopted April 18. Pamphleteers must reserve the space, and only one group at a time may use it. Violators face misdemeanor fines up to $500 under the municipal code.

All of those restrictions violate speech protections in the federal and state constitutions, the ACLU and the Tea Party have argued. The two groups jointly filed suit April 28 seeking a permanent ban on the policy.

Marlow did not rule on the merits of the leafleting restrictions. But in temporarily blocking the policy she sided with civil libertarians, who argued even a minimal loss of free speech is an irreparable injury.

"We're delighted with the outcome," said Linda Lye, attorney for ACLU-Northern California. "We think the judge absolutely did the right thing. Speech is time sensitive, and the opportunity to speak on a topical issue once lost is forever lost."

Tim Pappas, Shasta County assistant public defender, also praised Marlow's ruling. "Even the threat of enforcement of any rule against my clients, even for a minimal period of time, causes irreparable injury that cannot be faithfully compensated by some pecuniary award of damages," said Pappas, who is representing the Tea Party on his own time.

Tea Party groups backing a city charter for Redding cite the city's library leafleting restrictions as a prime reason for "home rule," Pappas has said. They plan to hand out fliers on the charter while a committee tasked with exploring the idea is still working, he said.

City Attorney Rick Duvernay argued that the city's leafleting policy does not deprive anyone of their First Amendment rights. He said the restrictions strike a balance by allowing limited leafleting while protecting patrons from unwanted solicitation. The policy also is designed to shield pamphleteers who follow the rules against complaints from patrons, Duvernay said, noting the courts have supported many government efforts to regulate free speech for those double-edged protections.

Marlow called the city's misdemeanor citation for violating the leafleting policy harmful to free speech. "At any point someone could interfere with the threat of criminal action," Marlow said.

Marlow's order temporarily blocking the policy did not clarify issues, Duvernay said. "Unfortunately, the effect of the ruling is that local citizens temporarily take a step backward in clearly understanding what is allowable First Amendment activity outside the library," Duvernay said.

But Duvernay was pleased Marlow recognized the library director had authority to set reasonable time, place and manner restrictions on pamphleteering, signature gathering and other speech around the building even before the leafleting policy was adopted last month.

The library director will continue to manage free speech outside the building case by case until the court resolves the legal issues over the policy, Duvernay said.

Marlow urged both sides to settle the dispute during a conference rather than in court to avoid the possibility that Redding's cash-strapped general fund may have to pay attorneys fees should the city lose.

The Tea Party and the ACLU have not offered the city any specific changes to the policy, just broad objections, Duvernay said. Pappas said he would welcome a settlement to avoid cost to taxpayers. "Based on the city's arguments in court, we are about as far apart as two sides can be," Pappas said. "Only time will tell." Lye said the city would have to essentially scrap the entire policy before the ACLU would be satisfied.

Redding Library is one of the busiest public spaces in Shasta County, drawing some 20,000 visitors per month, civil libertarians note. They consider the library a natural place to distribute information. The ACLU and the Tea Party seek broad freedom to approach library patrons, leaflet windshields and, at least in the ACLU's case, seek charitable donations. Both groups have engaged in leafleting, both independently and together on April 15.

Tea Party members recently deliberately violated the policy, stepping outside the free speech "bubble" to approach patrons and leaving pamphlets on car and truck windshields. Pamphleteers provoked no conflicts with patrons and did not observe any increase in parking lot litter, according to the Tea Party's legal complaint. But city officials warned Tea Party pamphleteers they were violating the policy, according to the complaint.

No one had asked the city about handing literature to passers-by in the library entrance until September, when Bostonian Tea Party members sought permission to provide pocket-size Constitutions and quotes from the Founding Fathers during Constitution Week. The Daughters of the American Revolution set up a table across from the Tea Party that same week, also to hand out literature on the Founding Fathers. Tea Party members protested when city officials tried to get the DAR to move their table to their side of the entrance, saying the group is nonpartisan and should be seen as independent. That conflict sparked the discussions leading to the policy adopted in April and now contested in court. Reported in: Redding Record-Searchlight, May 4.

schools

Burlington, Connecticut

In a case raising novel issues about student speech rights in the Internet era, a federal appeals court has upheld the discipline of a Connecticut student who had harshly criticized school officials in her Web journal.

The closely watched case involves Avery Doninger, who was a junior at Lewis S. Mills High School in Burlington in 2007 when she tussled with school officials over the scheduling of a band contest known as "Jamfest."

Doninger, who was a student council member and junior class secretary, went home and wrote in an entry in her public blog at the website livejournal.com that

"jamfest is cancelled due to douchebags in central office" and that readers should contact the superintendent "to piss her off more."

School officials, citing disruption by the emails and Doninger's Web comments, barred her from running for senior class secretary. She wasn't suspended.

Doninger and her mother initially sought an injunction barring her discipline, but a district court and a panel of the U.S. Court of Appeals for the Second Circuit, in New York, which included then-Circuit Judge Sonia Sotomayor, ruled against her. The student continued to press her claims for damages under the First Amendment's free-speech clause. She lost in 2009 in federal district court, which granted qualified immunity to the school officials who disciplined her.

In an April 25 decision a new Second Circuit panel ruled unanimously that school officials were immune from Doninger's suit. "It was objectively reasonable for school officials to conclude that Doninger's behavior was potentially disruptive of student government functions (such as the organization of Jamfest) and that Doninger was not free to engage in such behavior while serving as a class representative—a representative charged with working with these very same school officials to carry out her responsibilities," Judge Debra Ann Livingston said in her April 25 opinion for the panel in Doninger v. Niehoff.

The court said it was "not clearly established at the time of these events that Doninger had any First Amendment right not to be prohibited from running for senior class secretary because of offensive off-campus speech, at least when such speech pertained to a school event, invited students to read and respond to it by contacting school administrators, and it was reasonably foreseeable that the speech would come on to campus and thus come to the attention of school authorities."

The court stressed that it was stopping short of ruling whether the school discipline actually violated Doninger's free speech rights. And, "to be clear, we do not conclude in any way that school administrators are immune from First Amendment scrutiny when they react to student speech by limiting students' participation in extracurricular activities."

But the speech at issue in Doninger's case was closely tied to school events, and the student's role as a council member and class officer was signficant in the qualified-immunity analysis, the court said.

The court noted that the U.S. Supreme Court "has yet to speak on the scope of a school's authority to regulate expression that, like [Doninger's], does not occur on school grounds or at a school-sponsored event."

On a separate issue in the suit, the Second Circuit court upheld school officials' immunity over barring Doninger from wearing a T-shirt related to the controversy at a school election assembly. The T-shirts said "Team Avery" on the front, in reference to Doninger, and "Support LSM Freedom of Speech" on the back, referring to the high school. Doninger and her supporters were told they could not wear the shirts into the assembly.

The federal district court had sided with Doninger on the T-shirt issue, holding that her right to wear such a shirt into the assembly was clearly established. But the Second Circuit panel reversed, granting immunity to school officials who barred the T-shirts, even if they were mistaken legally.

The school principal "faced a difficult task in assessing whether the threat of disruption was severe enough to justify preventing Doninger from wearing her T-shirt into the assembly," the court said. A reasonable jury might find that the threat of disruption was not sufficiently substantial, the court added. "We cannot conclude, however, that such a mistake was anything but reasonable - the very sort of mistake for which the qualified immunity doctrine exists to shield officials against unwarranted liability." Reported in: Education Week, April 25.

Easton, Pennsylvania

"I ♥ Boobies" bracelets worn by students in support of breast cancer awareness are not lewd or vulgar, a federal judge ruled April 12, ordering Easton Area School District officials to lift ban on the jewelry.

U.S. District Court Judge Mary A. McLaughlin found the ban by middle school administrators on the popular rubber wristbands was not supported by case law that allows school officials to restrict students' speech when it is lewd or disruptive.

> "The bracelets are intended to be … viewed as speech designed to raise awareness of breast cancer and to reduce stigma associated with openly discussing breast health," McLaughlin wrote in a forty-page opinion. She also found the school district failed to prove that teachers and administrators encountered a substantial disruption when students wore the bracelets in school.

Brianna Hawk,13, and Kayla Martinez, 13, who were represented by the American Civil Liberties Union of Pennsylvania, sued the district in November after being threatened with suspension for refusing to remove the bracelets. In what was believed to be the first lawsuit on the subject of the bracelets, they argued the district's ban violated their First Amendment right to free speech.

McLaughlin granted the girls' request for a preliminary injunction that blocks disciplinary action against the girls and allows them to partake in school activities for the rest of the year.

Kayla's mother, Amy Martinez, said she's pleased with the decision but shocked that the situation wound

up in federal court. She expected district officials would be open to discussion when her daughter was first threatened with discipline for wearing an "I Ì Boobies" bracelet on breast cancer awareness day despite a ban.

"I'm happy it came to this. It gives the average person some faith that the Constitution still applies," she said.

ACLU attorney Mary Catherine Roper said the district must decide whether it will appeal McLaughlin's decision immediately, move forward with the case or settle with the girls. Roper said her clients want the disciplinary mark removed from their records. Reported in: The Morning Call, April 12.

student press

Ithaca, New York

Even a student newspaper that is a "limited public forum" can be censored under Hazelwood, a federal appeals court ruled May 17. Advocates called it the most damaging decision to high school student journalism in the past twenty years.

The U.S. Court of Appeals for the Second Circuit held that a stick figure editorial cartoon about sex education could be lawfully censored in both a school-sponsored student newspaper and a newspaper produced independently, off school grounds.

The cartoon was created for the January 2005 issue of *The Tattler* at Ithaca High School in New York. After school officials prevented student editors from printing it on the grounds that it was inappropriate, students created an independent publication called *The March Issue*, which also contained the cartoon. Ithaca City School District administrators later denied the students' request to distribute the newspaper on campus.

In siding with the district, the unanimous three-judge panel found *The Tattler* to be a "limited public forum," but concluded that the school could censor it anyway.

"While ICSD apparently opened the newspaper to some—or even many—types of speech, there is no evidence that the school permitted 'indiscriminate use by the general public,' as is required to create a traditional public forum or designated public forum," Judge Jose Cabranes wrote.

The Student Press Law Center (SPLC) has for years told student journalists that having their publication declared a "public forum" will provide them with greater freedom than is available under the U.S. Supreme Court's 1988 Hazelwood School District v. Kuhlmeier decision. In that case, the Court decided schools may censor non-forum, curricular publications for legitimate educational reasons.

The Second Circuit, however, made a distinction between a "limited" public forum and a "designated" public forum, holding that a "limited" forum newspaper remains subject to Hazelwood.

Frank LoMonte, executive director of the SPLC, said the court misapplied the law, and that a forum is "limited" because it's limited to student authors – not limited to the topics approved by administrators.

"The court just fundamentally misunderstood what it means to be a limited public forum," LoMonte said. "A forum where the government gets to pick and choose which cartoons it likes is meaningless."

As to the independent *March Issue*, the court found the school justified in keeping it off campus because the cartoon was "lewd" and could be prohibited under the Supreme Court's decision in Bethel School District v. Fraser. In Fraser, the high court upheld the discipline of a high school student who gave a speech at a school assembly filled with sexual innuendo.

"Although the Supreme Court has not clarified the extent to which the Fraser doctrine applies in contexts beyond the facts of that case… we have not interpreted Fraser as limited either to regulation of school-sponsored speech or to the spoken word," Cabranes wrote.

LoMonte said the purpose of Fraser was to allow a school to disassociate itself from lewd speech in front of a captive audience. He said readers of an independent student newspaper are the exact opposite of a captive audience.

The Ithaca decision now becomes binding precedent in Connecticut, New York and Vermont, unless it is appealed to the Supreme Court or reheard by all twelve judges on the Second Circuit.

LoMonte said more specific student publications policies may now be needed to protect the rights of student journalists. "I think the words 'limited public forum' by themselves may no longer be enough," he said.

However, LoMonte said the seven existing state laws designed to provide enhanced free expression rights for high school students are not in jeopardy after the ruling. Those statutes, he said, do not use the term "limited public forum" in isolation. He hopes to see additional states pass laws in response to the ruling.

"Any reasonable legislator who looks at this case is going to realize that it sets up an intolerable situation," LoMonte said. "I would anticipate that this is going to ignite a movement in all of the Second Circuit states to rein in the discretion that the court has just granted." Reported in: splc.org, May 18.

universities

Chicago, Illinois

A federal judge's ruling may make it harder for public universities to cite a federal student privacy law to deny requests for information by reporters or others.

The decision, by Judge Joan B. Gottschall of the Northern District of Illinois's Eastern Division, came in

a lawsuit filed by the *Chicago Tribune* in 2010, in the wake of its 2009 series "Clout Goes to College," which examined the University of Illinois's now-dismantled "clout" admissions system in which trustees and senior administrators pressured admissions officers on behalf of politically connected applicants. The series prompted the resignation of the university's president and other officials and a revamping of its governing board.

In a December 2009 request under Illinois's Freedom of Information Act, a *Tribune* reporter sought a list of applicants, their parents, and the names of anyone who intervened on the candidates' behalf—a request that university officials rejected, citing several state laws and the Family Educational Rights and Privacy Act, the federal law that protects the privacy of students' educational records. (Colleges commonly reject information requests citing the law, known as FERPA—too commonly, in the eyes of some journalism advocates.) [See related story on page 151.]

The newspaper sued in January 2010, asking the court to decide only one narrow question: Does the federal law, bar the release of the requested records?

University officials insisted that it did. The state FOIA law, they argued, contains an exemption for "[i]nformation specifically prohibited from disclosure by federal or state law or rules and regulations implementing federal or state law." And FERPA, Illinois administrators said, states that "[n]o funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein ...) of students without the written consent of their parents to any individual, agency, or organization...."

That combination meant that the university could not release the records without violating the federal law, Illinois officials asserted.

The Tribune made a series of arguments in favor of the records' release, including that the documents were not "education" records (but rather evidence pertaining to "possible misconduct and politically motivated favoritism by public officials"), and that the applicants' files were not the records of students, but of potential students. But the court focused on a third assertion, which is that the federal law does not in any way prohibit the release of educational records, and hence cannot be cited as an exemption to the state open records law.

FERPA, enacted under the U.S. Constitution's Spending Clause, "does not forbid Illinois officials from taking any action," Judge Gottschall wrote. "Rather, FERPA sets conditions on the receipt of federal funds, and it imposes requirements on the Secretary of Education to enforce the spending conditions by withholding funds in appropriate situations.... Illinois could choose to reject federal education money, and the conditions of FERPA along with it, so it cannot be said that FERPA prevents Illinois from doing anything."

Journalism officials heralded the decision, which Frank LoMonte of the Student Press Law Center called "enormously significant."

"It establishes, as a matter of law, what a lot of us have believed for a long time: that FERPA doesn't excuse your compliance obligations under state law," he said. Many college officials are all too eager to find reasons not to make documents available to reporters and the public, said LoMonte, and are quick to seize on exceptions like those in the Illinois FOIA law.

Because the Illinois law is similar to laws in numerous other states, said LoMonte, the law center's executive director, "this has real potential to rein in the widespread abuses we've seen where FERPA is frivolously raised as an obstruction to newsworthy records requests."

Not so fast, some other legal experts said. S. Daniel Carter, director of public policy for Security on Campus, which advocates for victims of campus violence, said he agrees that the federal privacy law has "inappropriately been interpreted overly expansively" by college officials, as a "catchall for saying 'we can't or don't want to release anything that makes us look bad.' "

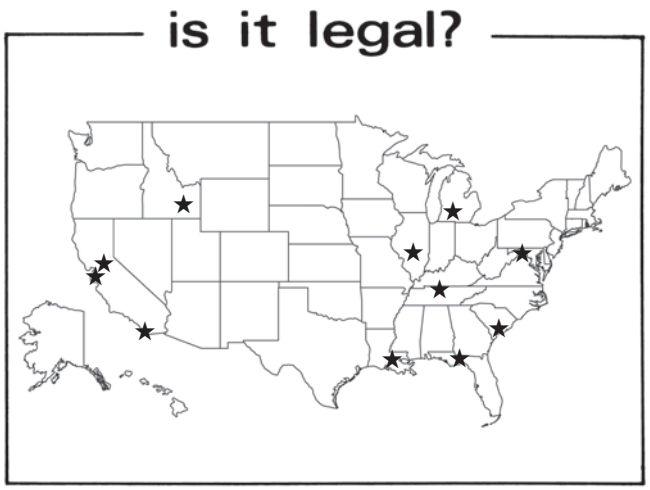
He also said he believes the court correctly decided the Illinois case, from a literal standpoint. "FERPA is not a federal mandate," although some Education Department officials have historically seen it as one, he said. "An entity can elect not to enter into the agreement" that imposes FERPA's requirements, by choosing not to take federal student aid.

But Carter said he thinks it unlikely that the Tribune case will significantly change the balance of power between colleges and other holders of information and newspapers and other seekers of it, even if the Illinois case ends up being upheld on what are almost certain to be future appeals. That's because "I believe that most state legislators have intended to include FERPA in their exemption to state FOIA laws," he said.

And while only a few states have already amended their open-records laws to provide exceptions for the federal law, many others would probably do so, Carter said, if a court decision like the Illinois one tells states "you can either amend your law or all your colleges can no longer be eligible to award federal financial aid.... I think you'd see a lot of legislatures changing their laws so they specifically refer to FERPA."

Steven D. McDonald, general counsel at the Rhode Island School of Design and a national expert on the federal education privacy law, shared Carter's confidence that states would not let their colleges stay between a FERPA rock and a FOIA hard place for long.

(continued on page 165)



schools

Washington, D.C.

In an effort to clarify student data privacy rules for researchers and education officials alike, the U.S. Department of Education proposed several changes to the Family Educational Rights and Privacy Act, or FERPA, on April 7 and named its first chief privacy officer.

"Data should only be shared with the right people for the right reasons," U.S. Secretary of Education Arne Duncan said in a statement on the proposals. "We need common-sense rules that strengthen privacy protections and allow for meaningful uses of data. The initiatives announced today will help us do just that."

The department proposes the following changes to FERPA:

- Tighter enforcement: In the past, department officials said there has been confusion about whether agencies that received permission to work with student data—but did not collect it or work with the children directly—could be held to the same standards for protecting students' privacy. The new rules would require that everyone who has access to student data, even through an "exception" in FERPA, would still be held to the law. Those who fail to meet the requirements could see their grants withheld or be barred from student data-sharing for five years.

- Directory information protection: Rather than simply categorizing something as directory information, the department proposed that schools be allowed to have directories for limited uses, to limit the ability of marketers or identity thieves from accessing the data. For example, a school could collect data for a yearbook, like a student's name, grade, photo, and activities, but restrict that use to the yearbook itself.

- State representation: FERPA already allows districts to enter into written agreements with researchers to use data to evaluate programs, but the department also would allow states to create such agreements on behalf of multiple districts. This would allow state officials to research the effectiveness of a statewide kindergarten reading program, for example, or to compare the implementation of math coaches among districts.

- P-20 tracking: In keeping with the department's push for better college and career readiness information, it also would allow high school administrators to share student achievement data to track their graduates' academic success in college.

In addition, the department launched a new division devoted to "responsible stewardship, collection, use, maintenance, and disclosure of information at the national level within the Education Department," and will supervise the department's existing technical assistance for states and districts.

Its new chief, Kathleen Styles, comes from the Census Bureau, where she headed the Office of Analysis and Executive Support, which manages "confidentiality, data management, the Freedom of Information Act, privacy policy, and coordination for the acquisition and management of data from other agencies" for the nation's largest data system. She has 17 years of experience as a public and private attorney and is apparently "passionate about privacy."

Back in November, the department launched a new Privacy Technical Assistance Center (PTAC), housed at the National Center for Education Statistics, to answer states' questions on privacy issues. Education Department officials said that PTAC has already gotten a lot of questions from states and districts, not just on FERPA requirements, but about more practical problems associated with the plethora of new state longitudinal data systems sprouting in the last few years: How to keep data secure, what policies to put into place to govern the use of the data, and how to safely collect and report the new information required by the fiscal-stimulus law.

The technical assistance center is developing a privacy toolkit for states, including a checklist for data privacy policies and a list of frequently asked questions. It

also is coordinating regional visits and training for state officials who are building privacy protections for their states' longitudinal databases. It has released a series of briefs on common privacy issues, such as definitions and best practices, as well.

PTAC is also looking for feedback from states and districts about how to define what counts as "reasonable methods" for data security; it plans to release guidance on best practices in that area later. Reported in: Education Week, April 7.

Baton Rouge, Louisiana

A 17-year-old Baton Rouge high school senior is leading the fight to repeal a Lousiana law that gives teachers license to equate creationism with evolution —and now he is doing it with the support of more than forty Nobel laureates.

Zack Kopplin, who attends Baton Rouge Magnet High School, has been leading a campaign against the state's Science Education Act since last summer, organizing students, teachers, professors, clergy and business leaders to support the repeal. He planned a rally April 28 at the Lousiana State Capitol in Baton Rouge, where legislators began a new session and a bill has been introduced by a Democrat to repeal the law. Gov. Bobby Jindal, a Republican, opposes a repeal.

"The single most important reason why I took on this repeal was jobs," Kopplin told the *Washington Post*. "This law makes it harder for Louisiana students to get cutting-edge science-based jobs after we graduate, because companies like Baton Rouge's Pennington Biomedical Research Center are not going to trust our science education with this law on the books."

He also won the support of major scientists and national and local organizations in support of the repeal; more than forty Nobel laureates signed a letter that was sent to the Louisiana Legislature. The National Association of Biology Teachers and the Louisiana Association of Biology Educators also back Kopplin's campaign.

"The repeal has been rapidly gaining momentum over the last year," Kopplin said. "People are calling and asking their legislators to take a stand for accurate and evidence-based science. People are driving in from as far away as Shreveport for our rally. I believe that this repeal will pass this year. Louisiana students want to be taught science that will prepare them to get jobs in today's global economy," he said.

Meanwhile, creationists have been busy in a number of states already this year. Since January, anti-science legislators in seven states have proposed nine bills attacking evolution and evolution education, according to the National Center for Science Education, which defends the teaching of evolution in public schools.

Many of the bills cite "academic freedom," the idea that teachers should have the freedom to teach different theories equally. Of course that ignores the overwhelming scientific consensus on the validity of evolution and tries to equate biology's animating principle with creationist theory that virtually all scientists reject.

The issue is important, especially at a time when most high school biology teachers are reluctant to endorse evolution in class, according to a recent poll. According to the poll, conducted by Penn State political science professors Michael Berkman and Eric Plutzer and published in Science magazine:

- About 28 percent consistently implement National Research Council recommendations calling for introduction of evidence that evolution occurred, and craft lesson plans with evolution as a unifying theme linking disparate topics in biology.

- About 13 percent of biology teachers "explicitly advocate creationism or intelligent design by spending at least one hour of class time presenting it in a positive light."

- The rest, about 60 percent, "fail to explain the nature of scientific inquiry, undermine the authority of established experts, and legitimize creationist arguments." Reported in: Washington Post, April 22.

Sumner County, Tennessee

Sumner County schools have shown a pattern of promoting Christianity by allowing groups to hand out Bibles at school, having students sing "Shout Amen" in a chorus program and permitting a teacher to hang a cross in her classroom, a lawsuit filed May 2 alleges.

The American Civil Liberties Union of Tennessee filed the civil suit in U.S. District Court in Nashville on behalf of nine students, who remain anonymous and are not giving media interviews. They attend Beech High School, T.W. Hunter and Ellis middle schools and Madison Creek and Indian Lake elementary schools.

The suit claims that since 2006, Sumner school officials repeatedly violated the First Amendment requirement that public schools and their employees remain neutral when it comes to the endorsement of one religion over another.

"Your choice to believe or not believe should be made within your family," said Tricia Herzfeld, legal director of the ACLU of Tennessee. "It's not an appropriate role for government officials, whether it be at school or work. Children should be free from pressure to believe in a particular faith."

Among other things, the lawsuit alleges that:

- The Gideons International and others were allowed to proselytize and hand out Bibles to Sumner students.
- At Madison Creek Elementary during morning announcements, the student Bible Club often prayed over the loudspeaker.
- Ellis Middle held its fall program in November with nine songs—seven of which were religious in nature.
- A teacher at T.W. Hunter Middle displayed a 10-inch cross above her whiteboard.
- A youth pastor from Long Hollow Baptist Church in Sumner County was allowed to eat lunch weekly with students at T.W. Hunter Middle and talk about his church and religion.
- Three high school graduation ceremonies are planned at the same church.

The lawsuit attempted to halt a student event May 3 at Long Hollow Baptist, but a judge denied a temporary restraining order for the anti-tobacco and -alcohol event. Herzfeld said she doesn't think the ruling has an implication on the outcome of the overall case.

Charles Haynes, a senior scholar at the First Amendment Center in Washington, D.C., said public schools in the South continue to struggle when it comes to having religion in schools, while staying within the law.

Displaying a cross or religious poster in a classroom is unconstitutional because it endorses a single religion, unless the teacher has other religious symbols in the classroom for instructional purposes, he said. Students—on their own accord—can pray and hold Bible clubs at school under the First Amendment. Students also can pass out religious fliers to other students.

Schools can hold ceremonies at churches if there is legitimate cause, such as needing the larger space, but other venues should first be considered, he said. School districts are more prone to get into trouble if there are patterns of promoting a religion over long periods of time.

"I do think there are more examples of school officials promoting religion in the South," Haynes said. "There is no question about that, and it has gone on a very long time."

Other Middle Tennessee school districts have had issues with religion in schools before. Cheatham County schools settled a case with the ACLU last year about a planned prayer at a graduation ceremony and handing out of Bibles by a religious group.

The ACLU sued Wilson County schools in 2008 and won after Lakeview Elementary School's website linked to activities by "Praying Parents," a Christian group.

"We did rewrite a policy," said Mickey Hall, deputy director of schools in Wilson County. Now, when religious groups advertise events on fliers or posters, a disclaimer appears at the bottom that reads: "Wilson County School System and the administration of the school do not endorse or sponsor the event."

The case against Sumner County schools asks that a judge declare the practices unconstitutional and cover plaintiff attorney costs. Reported in: Nashville Tennessean, May 3.

colleges and universities

Berkeley, California

Guilty verdicts for practicing journalism are the stuff of authoritarian nations and now, apparently, the University of California, Berkeley.

A campus disciplinary panel has concluded that journalism student Josh Wolf should not have been inside Wheeler Hall on November 20, 2009, during an 11-hour student occupation even though, the panel acknowledged, he was filming the protest as a journalist.

His punishment? No dungeon or leg irons, but he must write an essay to help the administration establish a clear policy on the rights of student journalists.

"I'm more than happy to do anything I can to remedy the situation for future journalists," said Wolf, 28. "But it seems absurd to make it my punishment. (I'm) a consultant without pay under threat of not getting my diploma."

For Berkeley and its students, Wolf's guilty verdict also raises questions about First Amendment rights, whether punishing one journalist leads others to censor themselves—known as the chilling effect—and who is a journalist in the first place.

Wolf, who graduated in May with a master's degree from Berkeley's Graduate School of Journalism, was found guilty of violating three sections of the campus-wide student conduct code when he accompanied students who seized Wheeler Hall to protest tuition hikes.

"That's disappointing," said Frank LoMonte, executive director of the Student Press Law Center in Virginia, who has tracked Wolf's case for a year. Legally, he said, "having a press pass doesn't give you a license to trespass where other civilians can't go. Having said that, we generally forgive minor trespassing because it's important for us to get the story. So it's an awfully fine technicality to punish someone for zealously doing his job."

Wolf said the chilling effect is real, and that other student reporters have told him they worry about being punished for covering campus events and having to spend months defending themselves, as he did.

On November 20, 2009, three months into his two-year journalism program, Wolf hung his student press pass around his neck and entered Wheeler Hall with dozens of protesters to film their building takeover from the inside. It was a decision that Journalism School Dean Neil Henry called "defensible under the highest ideals of our profession," in an April 2010 letter to the Office of Student Conduct.

"After the police broke through the door, everyone quickly ran into the classroom where I continued filming as students were arrested one by one," Wolf told the three-member disciplinary panel. Police arrested Wolf, too.

It wasn't the first time he was taken into custody for journalism. Wolf served 7 ½ months in federal prison in 2006 and 2007 after refusing to turn over unedited footage of a violent demonstration in San Francisco involving federal property. He eventually posted the footage on his site, joshwolf.net.

In that case, Wolf's stance focused public attention on whether federal law should shield journalists from having to turn over unpublished material, as California law does. That debate continues in Congress. Similarly, the Berkeley case draws attention to the rights of campus journalists.

Wolf's essay on that topic is due June 30, and he plans to comply. But he'll also appeal the panel's finding that he broke university rules by covering the Wheeler occupation, he said.

Given all that has happened, would he again enter the building with the protesters to cover the story from the inside? Yes, Wolf said. "Absolutely." Reported in: San Francisco Chronicle, May 6.

Davis, California

University of California, Davis students angry about rising tuition have staged many protests in the last year and a half – including sit-ins at campus buildings, a naked rally on the quad and a march that almost walked onto Interstate 80.

Now students are staging a new confrontation against campus management, accusing administrators of spying on their activist movement. Student activists and the American Civil Liberties Union held a press conference April 12 to call attention to their allegation that university officials have violated students' rights to free speech by monitoring their demonstrations.

"When the administration tells us over and over that they are in support of us … and then they turn around and show us this mistrust by infiltrating our peaceful student organizations, it sends a very contradictory message to us," said student Eric Lee, 20.

Davis officials say there is no contradiction in their approach. They have formed a more organized response to campus activism as it has heated up, said Assistant Vice Chancellor Griselda Castro. But the goal is to make it safer—not harder—for students to exercise their First Amendment rights.

"Our premise is that if we have a presence, there is less cause for police action. That is primarily our goal," Castro said.

Demonstrations swept across University of California campuses statewide during the fall of 2009, when the governing Board of Regents voted to raise tuition by 32 percent in response to budget cuts from the state. In November of that year, 53 UC Davis students were arrested after they refused to leave the administration building known as Mark Hall.

Chancellor Linda Katehi later said she didn't want any more students arrested because it brings excessive attention to their protests. Demonstrations continued throughout the year but with a milder police response.

Meanwhile, university officials were planning a new way to monitor and respond to demonstrations. Previously, keeping tabs on campus protests had been the job of a handful of employees from the student affairs division, Castro said. The new approach involved asking for volunteers from several departments, and training dozens of people in how to staff a protest while respecting student rights to free expression.

"We needed more help," Castro said. "And we had to train. So we had to put things in writing."

Putting things in writing led to the press conference, where students presented hundreds of pages of emails, rosters and protocol outlines detailing the duties of the new "Student Activism Team." The group is supposed to communicate with campus police and other officials about actions students are planning, attend protests and rallies, inform students if they are doing something unsafe, suggest ways to handle crowds and call for police if necessary.

Students got the documents after filing a Public Records Act request with the university, and they have since become the fodder for several articles in the campus newspaper and on community blogs.

Jeff Austin, a UC Davis computer programmer who is part of the group monitoring protesters, wrote in the comments following a Davis Vanguard article that there is nothing nefarious about the new effort.

"I can assure you we are only there to support the students," he wrote. "We do not interfere nor try to disrupt any of their activities. We are a support team made up of volunteers that care deeply about our students and the right to free speech that we all embrace and cherish."

At a recent protest, Austin said, some students discussed taking over a dormitory. But a member of the university's protest response team told them they would confront a legal battle because the dorm is a private locked building. So instead students chose to hold

their demonstration in a public building on campus, Austin said.

"We really are there for them," Austin said. "We're not spying, we're not taking names. We're just trying to make sure they stay safe."

Cres Vellucci, a board member of the Sacramento chapter of the ACLU, isn't buying it. He said the documents students gathered show that a campus police officer in plain clothes marched in a demonstration with students.

"When she was challenged by students she denied being a police officer," Vellucci said. "Our concern is that if there was one officer, there could have been more that were undiscovered."

Castro said UC Davis is now telling its officers to wear uniforms when they attend protests. And to drive home the point of the new group, Castro said, UC Davis may change its name next year – from the "Student Activism Team" to the "Freedom of Expression Support Team." What would George Orwell say about that? Reported in: Sacramento Bee, April 12.

San Diego, California

When two faculty members disagree about issues related to research, is it right for an administrator to intervene?

A faculty committee at the University of California at San Diego examined that question in a report in May that found that a dean responded to a dispute between two professors by telling one not to publish or speak out about the other's research. And that order, the committee concluded, violated basic principles of academic freedom.

"Faculty members' rights to study, re-analyze, and publish controversial scholarly materials cannot be abridged," said the report from the UCSD Committee on Academic Freedom. "These rights to academic freedom cannot be administratively revoked to prevent possible future breaching of professional norms. In our view, the campus administration's fundamental responsibility is precisely to protect the right of faculty members to research and publish scholarly work even when others, on or off campus, find the work or its conclusions controversial or objectionable."

The report goes on to call on the administration "to promptly and publicly accept responsibility for serious errors of judgment in this case" and "to take concrete steps to prevent future violations of academic freedom rights, such as training for all administrators and their staff on these rights, which lie at the very heart of the university."

The dispute at UCSD came as a controversy with some similar overtones alarmed some faculty members at the University of Minnesota-Twin Cities. In both cases, administrators have raised questions about faculty critiques of colleagues.

Even the suggestion that administrators might intervene in disputes between faculty members over research questions leaves faculty advocates concerned. "It really is not the business of an administrator to intervene in disputes over scholarship," said Cary Nelson, national president of the American Association of University Professors.

Nelson acknowledged that faculty members who disagree with one another loudly might sometimes make people uncomfortable. But he said that it is the duty of administrators to protect the right of everyone to share his or her views, not to shut down one side of a dispute.

"This is life," he said. "People disagree, and out of disagreement sometimes better understanding comes, and sometimes disagreement comes and that's all.... But if you don't want faculty fighting, all you have to do is not have faculty."

The report prepared by the UCSD faculty committee did not identify the professors who are in a dispute or the dean who intervened, going so far as to avoid naming disciplines, genders or the nature of the scholarly disagreement.

The dean's letter in question told a faculty member identified only as "Professor A" the following: "You are to stop harassing [Professor B]. This means: stop contacting B with questions regarding [name of B's publication], his/her research methods, or his/her previous research methods; stop contacting others about your re-analysis of his/her data; refrain from discussing ... your re-analysis of B's data at your presentations at any meetings, including scholarly meetings like the [name of professional association]; and do not publish texts that refer to ... your re-analysis of B's data."

The letter went on to tell Professor A: "If you continue to engage in these activities, you may be subject to formal discipline, which can include written censure, reduction in salary, demotion, suspension, or dismissal."

The faculty committee that issued the report said that it was surprising and alarming to have an academic administrator order a faculty member not to publish or speak about a scholarly matter. The panel noted that the dean went beyond potential issues of libel or slander or legal matters that might necessitate intervention. "Moreover, no faculty body had (or subsequently has) found that either professor had talked or published unprofessionally," the faculty report says. "To the contrary: a duly-appointed faculty committee involved in the dispute called precisely for continuing discussion through the normal channels of academic debate (publication and oral presentation)."

Adding to the concern of the faculty committee was that the dean's letter noted consultations with other senior administrators on the matter. Though the dean told the committee that his letter was simply "a well-intentioned

effort to protect reputations and collegial relations," the panel viewed the matter quite differently.

"We can not avoid the conclusion that the dean's letter contains clear and unacceptable violations of core academic freedom rights, violations that were apparently implicitly or explicitly supported by others in the university administration at the time," the faculty report said.

On May 25, the university released a statement that accepted the committee's findings. "We deeply regret that statements made by an academic administrator have led to questions about the administration's commitment to academic freedom rights," said the statement. "The Academic Senate leadership and administration of the University of California, San Diego unequivocally affirms our commitment to the principles of Academic Freedom. We acknowledge the recent determination by the Committee on Academic Freedom (CAF) and agree with CAF that the administration has a fundamental responsibility to protect the rights of faculty to research and publish scholarly work, and we will jointly redouble our efforts to ensure that every member of our administration fully understands this responsibility."

While the nature of the scholarly dispute at UCSD is unclear, that's not the case at Minnesota. There, the question of faculty criticism arose after bioethicists and other professors asked the Board of Regents for an independent review of a death in a clinical trial at the university. The board rejected the request.

Subsequently, Mark Rotenberg, general counsel of the university, posed a series of questions to a faculty committee, including this one: "What is the faculty's collective role in addressing factually incorrect attacks on particular [University of Minnesota] faculty research activities?"

Rotenberg has argued that the question is legitimate, and protects researchers at the university from having their credibility unfairly undermined. And he has denied trying to punish those who have raised questions about the clinical trial.

Many faculty members at the university haven't been reassured, and see the question about "factually incorrect attacks" as an administrator's attempt to declare certain subjects off limits for faculty critiques of colleagues. Some faculty leaders, however, have said that Rotenberg's role has been mischaracterized and that the discussions have not amounted to any effort to limit academic freedom.

In both Minnesota and California, administrators have said that they are in some ways protecting faculty members from unfair or unreasonable criticism from colleagues. Those who are upset about the administrators' involvement say that they aren't opposed to civility, just the way it is being promoted.

Nelson of the AAUP said that "I'm a great believer in civility" and that everyone on campus can be a role model in promoting it. But he said that "faculty themselves" need to sort through any problems -- and that research disputes are best left for the marketplace of ideas to work out.

What if a faculty member complains about a colleague? Nelson said the answer is simple: "The dean should say, 'According to my records, you are both grown-ups and can handle this problem yourselves.'" Reported in: insidehighered.com, May 26.

Tallahassee, Florida

A conservative billionaire who opposes government meddling in business has bought a rare commodity: the right to interfere in faculty hiring at a publicly funded university.

A foundation bankrolled by Libertarian businessman Charles G. Koch has pledged $1.5 million for positions in Florida State University's economics department. In return, his representatives get to screen and sign off on any hires for a new program promoting "political economy and free enterprise."

Traditionally, university donors have little official input into choosing the person who fills a chair they've funded. The power of university faculty and officials to choose professors without outside interference is considered a hallmark of academic freedom.

Under the agreement with the Charles G. Koch Charitable Foundation, however, faculty only retain the illusion of control. The contract specifies that an advisory committee appointed by Koch decides which candidates should be considered. The foundation can also withdraw its funding if it's not happy with the faculty's choice or if the hires don't meet "objectives" set by Koch during annual evaluations.

David W. Rasmussen, dean of the College of Social Sciences, defended the deal, initiated by an FSU graduate working for Koch. During the first round of hiring in 2009, Koch rejected nearly 60 percent of the faculty's suggestions but ultimately agreed on two candidates. Although the deal was signed in 2008 with little public controversy, the issue revived last week when two FSU professors—one retired, one active—criticized the contract in the Tallahassee Democrat as an affront to academic freedom.

Rasmussen said hiring the two new assistant professors allows him to offer eight additional courses a year. "I'm sure some faculty will say this is not exactly consistent with their view of academic freedom," he said. "But it seems to me it would have been irresponsible not to do it."

Most universities, including the University of Florida, have policies that strictly limit donors' influence over the use of their gifts. Yale University once

returned $20 million when the donor demanded veto power over appointments, saying such control was "unheard of."

Jennifer Washburn, who has reviewed dozens of contracts between universities and donors, called the Koch agreement with FSU "truly shocking." Said Washburn, author of University Inc., a book on industry's ties to academia: "This is an egregious example of a public university being willing to sell itself for next to nothing."

The foundation partnering with FSU is one of several non-profits funded by Charles Koch (pronounced "coke''), 75, and his brother David, 71. The aim: To advance their belief, through think tanks, political organizations and academia, that government taxes and regulations impinge on prosperity.

The Koch philosophy is similar to that of Rick Scott, who, in one of his first acts as Florida's governor, froze all new state regulations on businesses, and has pushed for tax cuts.

The Koch brothers own the second biggest private U.S. corporation, maker of such popular products as Brawny paper towels, Dixie cups and Stainmaster carpet. Koch Industries, which had $100 billion in sales last year, also owns thousands of miles of oil pipelines, refineries and Georgia-Pacific lumber. The Koch brothers are each worth $22 billion.

Charles, chairman and CEO of Koch Industries in Wichita, Kansas, cofounded the Cato Institute, a policy-making group, in 1977. His brother serves on the board. David, who lives in Manhattan and is Koch Industries' executive vice president, in 2004 started the Americans for Prosperity Foundation, which has worked closely with the Tea Party movement.

The Charles G. Koch Charitable Foundation, to which he has given as much as $80 million a year, has focused on "advancing social progress and well-being" through grants to about 150 universities. But in the past, most colleges, including Florida Gulf Coast University in Fort Myers, received just a few thousand dollars.

The big exception has been George Mason University, a public university in Virginia which has received more than $30 million from Koch over the past 20 years. At George Mason, Koch's foundation has underwritten the Mercatus Center, whose faculty study "how institutions affect the freedom to prosper."

When President George W. Bush identified 23 regulations he wanted to eliminate, 14 had been initially suggested by Mercatus scholars. In a New Yorker profile of the Koch brothers in August, Rob Stein, a Democratic strategist, called Mercatus "ground zero for deregulation policy in Washington."

Now, rather than taking over entire academic departments, Koch is funding faculty who promote his agenda at universities where there are a variety of economic views. In addition to FSU, Koch has made similar arrangements at two other state schools, Clemson University in South Carolina and West Virginia University.

Bruce Benson, chairman of FSU's economics department, said that of his staff of 30, six, including himself, would fall into Koch's free-market camp. "The Kochs find, as I do, that a lot of regulation is actually detrimental and they're convinced markets work relatively well when left alone," he said. Benson said his department had extensive discussion, but no vote, on the Koch agreement when it was signed in 2008. He said the Koch grant has improved his department and guaranteed a diversity of opinion that's beneficial to students.

"Students will ultimately choose," he said. "If you believe strongly in something, you believe it can win the debate."

Benson makes annual reports to Koch about the faculty's publications, speeches and classes, which have included the economics of corruption. He said FSU has promised to retain the professors in tenure-track positions hired under the Koch grant if the foundation ever feels they aren't complying with its objectives and withdraws support.

"So far, they're fine with what's going on," Benson said. "But I agree with what they believe, whether they give us money or not."

As originally drafted, the agreement called for the Koch foundation and FSU to raise up to $6.6 million for six faculty positions. That plan has been scaled back in the face of the recession, but FSU's dean dismissed suggestions that he signed the deal with Koch because of financial strain. "This would have been an opportunity to improve our economics department under any circumstances," Rasmussen said.

In addition to funding two slots, Koch has also donated nearly $500,000 for graduate fellowships. So far only BB&T, the bank holding company, has joined the effort, with its foundation pledging $1.5 million over ten years. The money is being used to hire an instructor who is not eligible for tenure; BB&T had no control over the hire, Rasmussen said.

A separate grant from BB&T funds a course on ethics and economics in which Ayn Rand's Atlas Shrugged is required reading. The novel, which depicts society's collapse in the wake of government encroachment on free enterprise, was recently made into a movie marketed to Tea Party members.

"If somebody says, 'We're willing to help support your students and faculty by giving you money, but we'd like you to read this book,' that doesn't strike me as a big sin," said Rasmussen of the BB&T arrangement, which the bank has with about sixty schools. "What is a big sin is saying that certain ideas cannot be discussed."

Nor does he fear that the agreements with Koch and BB&T will prompt future donors to demand control over

hiring or curriculum. Said Rasmussen, "I have no objections to people who want to help us fund excellence at our university. I'm happy to do it." Reported in: St. Petersburg Times, May 10.

Pocatello, Idaho

When the Idaho State Board of Education decided in February to dissolve the Faculty Senate at Idaho State University, it stripped faculty members of their only means of weighing in on important university issues, according to a report issued May 26 on the results of an investigation by the American Association of University Professors. And, while a new faculty body has since been convened, considerable acrimony remains in Pocatello.

The AAUP report was produced relatively quickly (the investigation was announced three months ago) and though it notes that "the conduct of the faculty and senate leaders cannot be said to have been flawless," it reserved much of its harshest criticism for the administration -- particularly President Arthur C. Vailas and the Idaho State Board of Education.

The 14-page document, with 13 footnoted rebuttals by Vailas (distilled from his 21-page response), details the deteriorating and increasingly poisonous relationship between the faculty, on the one hand, and Vailas and Provost Gary A. Olson on the other. The report, which was written by AAUP staff and sent to the university's administration and the state board for comment before its release, catalogs a flurry of recriminations, votes of no confidence, and charges and counter-charges. Faculty members accuse administrators of "disingenuous manipulation," while Vailas says the faculty's complaints arise from a "generalized discontent" that has been stoked by a select few.

The dissolving of the senate, and the actions leading up to it, resulted, the authors write, in "severely restricting the faculty's decision-making role in academic governance ... suppressing faculty dissent and ... with it the last vestiges of shared governance." In doing so, the authors continue, the board and administration violated the principles and standards of shared governance laid out in the Statement on Government of Colleges and Universities, which was jointly formulated by the AAUP, the American Council on Education and the Association of Governing Boards of Universities and Colleges -- a statement that, Vailas responds, was never adopted by ISU's administration or included in the handbook for faculty and staff.

In a statement, ISU called the AAUP report "biased and unbalanced" and said it contained "critical flaws" because the AAUP did not contact Vailas, other administrators or the State Board of Education during its investigation. The AAUP confirmed that it did not send anyone to Idaho to investigate; its staff e-mailed queries to senate leaders and forwarded a draft of the report to Vailas and the state board. While the AAUP said it incorporated many of Vailas's comments into the footnotes, the state board did not respond.

"AAUP representatives seem to have selectively interviewed those persons who embrace the viewpoint advocated by AAUP," the statement from ISU read. Or, as Vailas wrote to the AAUP in his rebuttal: "It appears … that you have already drawn your conclusions."

Much of the trouble between the administration and faculty, the report noted, dates to 2008, two years after Vailas assumed the presidency of the 12,200-student university in Pocatello, with branch campuses in Meridian, Idaho Falls and Twin Falls. It was in 2008 that the Vailas administration proposed a new manual of policies and procedures, which some on the faculty perceived as an incursion into academic and faculty personnel matters.

Faculty members began collecting grievances against the administration. In November 2009, seven months after Olson became provost, he announced that he and the president had devised a reorganization plan in response to a 6 percent cut in state funds, which came on top of a 12 percent reduction the previous year. Such a restructuring, he argued, would help stave off the dismissal of as many as 32 faculty members.

In a letter described in the report, Olson announced the formation of three task forces, each of which would be assigned to separate clusters of programs at ISU and asked to "carefully consider, discuss and fine tune -- or even reject, if necessary" the proposal put forth by Vailas and Olson. But one task force member told the AAUP that task force members were simply given the model and expected to justify and expand upon it -- an account that Vailas challenged as reflecting the view of one faculty member among the 36 who served on the task force.

In February 2010, ISU administrators unveiled a plan for the reorganization that, the report's authors say, was essentially the same as the one originally put forward months earlier. In March, the Faculty Senate called for a referendum on the plan. Nearly three-quarters of the 379 participating faculty voted to reject it. The referendum, Vailas said in his rebuttal to the AAUP, was "obstructionist" because it interfered with legitimate institutional governance. It also ignored what he characterized as significant changes that were made during the review process.

In April of that year, the administration forwarded the proposed reorganization to the state board over the faculty's objections. A few days later, 70 percent of the 431 faculty members who voted registered no confidence in Olson, though Vailas backed him publicly. Olson has since announced his intent to resign, effective in June.

In June 2010, the state board directed Vailas to review the faculty governance structure at ISU. Vailas commissioned an 11-member committee to work throughout the summer. Faculty members complained it had meager faculty representation and was stacked in favor of administration: two people serving on the committee were regular faculty members, but one later resigned and the other left for another university.

The committee's work was also cloaked in secrecy, some on the faculty complained. All members of the committee were asked to sign a statement of confidentiality barring them from discussing the work of the committee except with fellow members. Although the faculty chafed at this proviso, the report's authors note that other committees routinely required the same commitment to nondisclosure.

In August 2010, the committee produced a report calling for the creation of four new committees reporting to various vice presidents, which many faculty members perceived to be an effort to sidestep the Faculty Senate. When the senate received its copy, it asked the administration to permit the senate to vet the proposal before it was submitted to the state board.

That didn't happen. Four days after the faculty asked Vailas to allow for faculty input, he forwarded the proposal to the state board, calling the faculty governance system "often unproductive and inefficient." The senate's executive committee described as a "breach of faith" the decision to forward the proposed governance plan without faculty input (Vailas said many of its recommendations, in fact, came from earlier work by the senate).

The relationship continued to fray. In October, after a newspaper reported that Vailas called the faculty senate "dysfunctional," the senate prepared a vote of no confidence. Efforts to bring in a mediator failed. In February, the faculty returned a vote of no confidence in Vailas, citing 23 grievances, including administrative dysfunction, the dismissal of a tenured engineering professor in 2009, and concerns about the president's integrity.

Less than a week after that vote, the state board, acting on Vailas's request, dissolved the senate, suspended its bylaws and installed a new faculty body. Less than five minutes after the vote, campus security officers changed the locks on the senate offices and wrapped them in police tape, the AAUP report's authors say, citing faculty sources. Vailas said that it is misleading to attribute suspension of the senate to the vote of no-confidence because there is a "greater and meaningful context" -- and that the suspension was not meant as retribution.

Vailas established a "provisional structure" for the faculty to participate in academic governance. One part of this structure consisted of several existing councils; the other was a provisional faculty senate that would report to the provost. Two weeks after Vailas established the new provisional senate, faculty held an election for officers, which apparently was not sanctioned by the administration. Thirteen of its 18 members served as members of the senate before it was suspended. It has not been smooth going. The administration has not recognized the provisional senate, which voted at its first meeting to return to its previous committee assignments. Barbara Adamcik, associate vice president for academic affairs (and slated to serve as interim provost after Olson's resignation becomes effective), called the election of senate officers "inappropriate" and said she would call the first official meeting in the fall. Until then, she said, faculty senators will not need to have access to the senate office or cell phone. Reported in: insidehighered.com, May 26.

privacy and surveillance

Bloomington, Indiana

Law enforcement organizations are making tens of thousands of requests for private electronic information from companies such as Sprint, Facebook and AOL, but few detailed statistics are available, according to a privacy researcher.

Police and other agencies have "enthusiastically embraced" asking for e-mail, instant messages and mobile-phone location data, but there's no U.S. federal law that requires the reporting of requests for stored communications data, wrote Christopher Soghoian, a doctoral candidate at the School of Informatics and Computing at Indiana University, in a newly published paper.

"Unfortunately, there are no reporting requirements for the modern surveillance methods that make up the majority of law enforcement requests to service providers and telephone companies," Soghoian wrote. "As such, this surveillance largely occurs off the books, with no way for Congress or the general public to know the true scale of such activities."

That's in contrast to traditional wiretaps and "pen registers," which record non-content data around a particular communication, such as the number dialed or e-mail address that a communication was sent to. The U.S. Congress mandates that it should receive reports on these requests, which are compiled by the Administrative Office of the U.S. Courts, Soghoian wrote.

If law enforcement wants to intercept e-mail or instant messages in real-time, they are required to report it. Since 1997, federal law enforcement has requested real-time intercepts only 67 times, with state law enforcement agents obtaining 54 intercept orders. Soghoian wrote that those low figures may seem counterintuitive given the real-time nature of electronic communications. But all of the communications are stored, he noted.

"It is often cheaper and easier to do it after the fact rather than in real-time," Soghoian wrote.

Soghoian found through his research that law enforcement agencies requested more than 30,000 wiretaps between 1987 and 2009. But the scale of requests for stored communications appears to be much greater. Citing a *New York Times* story from 2006, Soghoian wrote that AOL was receiving 1,000 requests per month.

In 2009, Facebook told *Newsweek* that it received 10 to 20 requests from police per day. Sprint received so many requests from law enforcement for mobile-phone location information that it overwhelmed its 110-person electronic surveillance team. It then set up a Web interface to give

police direct access to users' location data, which was used more than 8 million times in one year, Soghoian wrote, citing a U.S. Court of Appeals judge.

Those sample figures indicate the real total number of requests is likely much, much higher, since U.S. law does not require reporting and companies are reluctant to voluntarily release the data.

"The reason for this widespread secrecy appears to be a fear that such information may scare users and give them reason to fear that their private information is not safe," Soghoian wrote.

In 2000, the House of Representatives considered legislation that would have set standards for reporting requests by police for location information, such as the tracking of mobile phones. But the Department of Justice opposed the bill, Soghoian wrote, saying the reporting requirements would be too time consuming.

Soghoian argues that Congress should have oversight of these new surveillance powers. He recommended mandating that the Administrative Office of the U.S. Courts compile statistics on requests for stored communications as they do now for wiretap orders. The information could be sent to the office by the courts rather than the DOJ.

"These reporting requirements would provide Congress with the information necessary to make sound policy in the area of electronic surveillance," Soghoian wrote. Reported in: PC World, April 12.

Lansing, Michigan

Michigan State Police officers, equipped with forensic cellphone analyzers, have extracted data from cellphones during their police work, and the American Civil Liberties Union wants to know more about it.

The ACLU has raised concerns over the legality of the cellphone scanners (which can scan both regular cellphones and smartphones) and whether the Fourth Amendment, which prohibits unreasonable searches and seizures, is being violated by the state police.

In a letter to the Col. Kriste Etue, the director of the Michigan State Police, the ACLU alleged that the agency has used such cellphone analyzers, called the Cellebrite UFED, in the field and has taken data from phones.

"The Fourth Amendment protects citizens from unreasonable searches," the letter said. "With certain exceptions that do not apply here, a search cannot occur without a warrant in which a judicial officer determines that there is probable cause to believe that search will yield evidence of criminal activity. A device that allows immediate, surreptitious intrusion into private data creates enormous risks that troopers will ignore these requirements to the detriment of the constitutional rights of persons whose cellphones are searched."

The ACLU said that it has asked for data from the police agency, known as the MSP, detailing how the devices are used, when they are used and if they have been used without the permission of those who own the phones or computers being scanned.

But the MSP has either denied knowing whether the requested information exists or asked for hundreds of thousands of dollars to turn the data over, the ACLU said in its letter to the agency.

"For more than two and a half years the ACLU of Michigan has attempted to obtain information about the use of these devices through the Michigan Freedom of Information Act," the ACLU letter said. "Specifically, we have asked for records, reports and logs of actual use. The MSP's estimated cost of $544,680 for retrieval and assembly of these documents for the entire period that five of these devices have been in the MSP's possession is, in our view, extraordinarily high. In fact, we were told that no part of that set of documents would be provided unless we agreed to pay a $272,340 deposit."

The ACLU said that it has filed nearly 70 records requests for the use of two of the devices for shorter time periods, in an attempt to narrow the scope of the data request and make it easier to get -- but still, the MSP hasn't handed over any information.

"We were told in each case that there were either no documents available for the period we identified, or that we would be required to pay in advance for MSP personnel to ascertain whether requested documents exist," the ACLU said.

After the ACLU of Michigan posted the letter on its website and a few news outlets covered the story, the Michigan State Police issued a statement on the data extraction devices, which it calls DEDs.

"The MSP only uses the DEDs if a search warrant is obtained or if the person possessing the mobile device gives consent," said Tiffany Brown, a state police spokeswoman, in a statement. "The department's internal directive is that the DEDs only be used by MSP specialty teams on criminal cases, such as crimes against children." Brown said the DEDs are not being used to extract anyone's personal information during routine traffic stops.

"The MSP does not possess DEDs that can extract data without the officer actually possessing the owner's mobile device," she said. "The DEDs utilized by the MSP cannot obtain information from mobile devices without the mobile device owner knowing."

Brown also said the DEDs the agency is using have been adapted for law enforcement use because of an increasing use of such devices by criminals to steal data from others, noting that such technology has become "a powerful investigative tool used to obtain critical information from criminals."

The ACLU said the MSP has refused to help narrow the

(continued on page 168)

schools

Clarkstown, New York

The Clarkstown Board of Education voted unanimously May 4 to keep a controversial novel in the high school English curriculum, ending weeks of furious debate among community members. The book in question, *The Perks of Being a Wallflower*, by Stephen Chbosky, is a coming-of-age novel that includes references to drugs, sex, homosexuality and offensive language.

"Reading is like travel. It opens up your eyes," school board member Robert Carlucci said before the vote. "I would never ban it."

The controversy erupted in early February, when Aldo and Patricia DeVivo of Congers, parents of a Clarkstown High School North junior, contacted the district, saying they objected to their daughter being taught the book in class. They said they found the book morally and religiously reprehensible.

In keeping with district policy, the student was allowed to pick an alternative book. But the parents said they were not happy with that alternative because their daughter would be the only one reading that book. Instead they demanded the district withdraw it from the curriculum and pull it from the libraries. They also campaigned to have the book banned, speaking at meetings and contacting officials.

The district formed a committee to study the issue. The committee concluded the novel had literary merit and should be a supplemental book in the English curriculum.

Before the vote, students, parents, teachers and PTA officials spoke in favor of the book. Philip DeGaetano, president of the board, and board member Kevin Grogan were not at the meeting.

"While the themes are controversial, they are not new to us," said Jordan Handler, 17, of Congers, a student at North. "We know about it already." Matthew Schwartz, 17, a junior, said the controversy prompted him to read the book.

"I think it is better for us to read this in a classroom setting. We can't be hidden from these kinds of things," said Schwartz of New City. "People are pulling passages out of context. If you take it away, you are hiding us from things that happen in life."

Rhea Vogel, Clarkstown North PTA president, cautioned the board. "We are going down a very slippery slope when we let a small group of people decide what our children can read," she said. "I caution our board not to give in to minority pressure."

No one spoke in opposition to the book.

The room broke out in applause after the board vote.

"While I understand the views and concerns of families who object to the book, I believe they are in the minority," Susan Phalen, an English teacher, said after the meeting. "So I'm pleased that the majority of the families in the district are against banning the book because it is controversial. The students said the parents have already given us their values. We want them to trust our judgment," she said. Reported in: lohud.com, May 5.

Merrill, Wisconsin

Members of the Merrill School Board decided not to ban a book some parents say is questionable reading material for their 10th grade students because of language, and sexual and racist themes.

The book, *Montana 1948*, was written by retired University of Wisconsin Stevens Point professor, Larry Watson. School leaders added it to the curriculum twelve years ago, saying it was a less controversial substitute for *Catcher in the Rye*. Members of the school board read the book to prepare themselves for the discussion at a special meeting May 16.

"Having your child not read a certain book is parenting and you have that right as a parent," said Merrill Superintendent Dr. Lisa Snyder. "But taking away a book from another child, that's censorship."

"I'm against the book being in the school," said Mary Litschauer, who has a son in 10th grade at Merrill High. "It's an adult-rated book and it doesn't belong in a high school. It's explicit."

Merrill High School's principal and the district's curriculum director addressed the board, but no public comment was accepted. School leaders said students have the option of reading a different book if they don't feel comfortable with the one they're assigned. Reported in: waow.com, May 16.

Florida Koran burning …from page 132)

required when members travel, he said.

"I don't right now feel personally afraid," he said. "But we are armed."

Jones said the decision to hold the mock trial of the *Koran* was not made lightly. "We were worried," he said. "We knew it was possible. We knew they might act with violence." There were similar predictions last year when Jones threatened to burn the Islamic holy book on September 11. While that decision was being discussed, throngs of reporters descended on the church, and Defense Secretary Robert M. Gates personally called and asked Jones not to do it. President Obama appealed to him over the airwaves.

Last year, even though Jones called off his burning of the *Koran*, a subsequent wave of protests at NATO facilities in Afghanistan led to at least five deaths. In several of those episodes, Taliban agitators played a role; they were said to have spread rumors that the *Koran* burning had taken place.

This time would be different—and not just because the event would be held in relative obscurity, before only a small group of sympathizers. This time, Jones said, there would be a trial, a fact that he said added heft to his decision. He teamed up with The Truth TV, a satellite channel out of California that is led by Ahmed Abaza, a former Muslim who converted to Christianity and who, Jones said, sympathizes with the church's message.

The pastor said The Truth TV reached out to him last year after he canceled his plan to burn the *Koran*, and a partnership of sorts has since flourished. Abaza helped provide him with most of the witnesses and lawyers for the mock trial, Jones said.

"I was not the judge," said Jones, who also said he had read only portions of the *Koran* and not the entire text. There was a prosecutor and a defense lawyer for the *Koran*, an imam from Texas. There were witnesses—although the defense did not call any—and a jury.

Yes, he said, he knew some of the jurors, and others came to the event after learning about it through his group's Facebook page. ("People were afraid, so not many volunteered," he said.) And yes, perhaps, his Facebook followers made up the majority who sentenced the *Koran* to burning in an online poll. Still, he said, "it was as fair a trial as we could have."

The Truth TV streamed the mock trial live in Arabic but chose not to broadcast the actual burning.

Jones's mission is not a popular one. His Dove World Outreach Center's membership evaporated after his preaching began to focus on what Jones said are the dangers of Islam. "We don't have any members," he said. "It's not something your average person wants to do. People want to hear the good news. But the church has a responsibility to speak about the word of God. But it also has to speak out about what is right—be it abortion or Islam. Churches and pastors are afraid."

He said he was no longer welcome in Gainesville—which he considers too small and unenlightened to understand his message—and is seeking to move. First, though, he has to sell the church's property, which is not easy in Florida, which is one of the nation's foreclosure capitals. And as his personal stake in his mission grows deeper, his bank account is running dry.

"Things are not easy at this particular time," said Jones, a Missouri native whose first career was as a hotel manager. "This has not been a moneymaking venture."

Residents in this city, home to the University of Florida, are also less than thrilled. Out in front of the church, signs that read "Islam Is of the Devil" have been edited by outsiders to say "Love All Men." In a housing complex across the street, some of the residents said they could not wait for Jones to leave.

"Why are they trying to incite hatred and anger?" asked Shawnna Kochman. "They are mean. God is meant to have loved everyone. It's a cult." Reported in: New York Times, April 1, 2, 3, 4, 5.□

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how much does your iPhone know …from page 134)

under heavy criticism for its initial silence after the discovery.

The location report attracted attention from some government officials, including Senator Al Franken, Democrat of Minnesota, who sent a stern letter to Apple asking why it was "secretly compiling" the data and what it would be used for. Congressman Edward Markey, a Democrat from Massachusetts, and Lisa Madigan, the Illinois attorney general, also sent letters to Apple asking for an explanation of the issue.

Google acknowledged that it, too, collected data about the location of Wi-Fi hot spots and cell towers from its users.

Apple's statement contained a tidbit about possible future product plans. The company said it also was collecting traffic data from its phones and tablets to build a crowd-sourced traffic database. That would enable

Apple to provide real-time traffic information along with navigation advice. Google already uses Android phones to collect real-time traffic information.

Apple's promised changes may not end the controversy, however. Alexis Madrigal, a senior editor at *The Atlantic*, informed readers of that magazine of his experience:

"I plugged my phone into my computer and opened an application called Lantern, a forensics program for investigating iPhones and iPads. Ten minutes later, I'm staring at everything my iPhone knows about me. About 14,000 text messages, 1,350 words in my personal dictionary, 1,450 Facebook contacts, tens of thousands of locations pings, every website I've ever visited, what locations I've mapped, my emails going back a month, my photos with geolocation data attached and how many times I checked my email on March 24 or any day for that matter. Want to reconstruct a night? Lantern has a time line that combines all my communications and photos in one neat interface. While most of it is invisible during normal operations, there is a record of every single thing I've done with this phone, which also happens to form a pretty good record of my life.

"Figuring that I've got nothing to hide or steal, I'd always privileged convenience over any privacy and security protocols. Not anymore. Immediately after trying out Lantern, I enabled the iPhone's passcode and set it to erase all data on the phone after 10 failed attempts. This thing remembers more about where I've been and what I've said than I do, and I'm damn sure I don't want it falling into anyone's hands."

Madrigal continued:

"[I]t's remarkably easy to reconstruct what happened to me on, say, April 13, my birthday, and the next day, when I celebrated the release of my book at an *Atlantic* party.

"I missed a call from my best friend at 12:30 a.m. wishing me a happy birthday. I got up at 7:04 a.m., which I know because I sent him back a text message. I got several more birthday greetings and phone calls. Then I had a meeting with Richard Florida and some other *Atlantic* people during which I Googled several things related to the meeting. Then I went on a radio show in Colorado, which I know both because my calendar shows it, but also because I searched the radio station. Then I took a cab to Union Station (I texted, "On my way to Union Station") and snapped a picture of a tour bus that we passed which claimed to be "American-Owned & Operated." I got to New York around 7:45 p.m., when I Googled my hotel's address. The next morning, I went to WNYC at 160 Varick Street to be interviewed by Brian Lehrer, all of which is obvious from my Internet history, text messages and photos. Then I met with a prospective job candidate at Le Pain Quotidien according to my calendar and spent an hour researching RandTXT.com. Then I went to my book party at a private home, and took some photos, which Lantern pinpointed perfectly.

"You could export most of this sequence to a Google Earth layer and look at it plotted with a time slider. Without trying to, I'd left a trail spelling out exactly what I did for 48 hours. Mobile forensics and mobile privacy don't have to sit in opposition, but what you can find with the former should inform our views about the latter. And you can suddenly find a ton with relatively simple tools.

"The big deal about location data isn't the data itself; rather, the location data makes all the other information that can be extracted exponentially more useful. That's why mobile forensics is different, and why our devices may be where the bubbling privacy concerns of the last decade come to a head.

"If our phones have become our outboard brains, we've actually put ourselves in a very difficult privacy position. Even searching a suspect's house could never yield a full inventory of that person's friends and acquaintances, the entire record of their voice and text communications -- and all the web pages he'd ever looked at. Now, law enforcement or a government official can have all of that in two minutes and physical access to one's cell phone." Reported in: New York Times, April 27; The Atlantic, April 25. □

FTRF Roll of Honor Award …from page 134)

Finan has been particularly active in fighting state "harmful to minors" statutes and advocating the role of the bookseller as a partner with libraries, users, publishers and all who produce, distribute or use First-Amendment protected materials. He has been a leader in the efforts to amend the USA PATRIOT Act. Recently he has worked with ALA and brought in new partners to expand the influence and scope of Banned Books Week nationwide.

Finan's book, *From the Palmer Raids to the Patriot Act: A History of the Fight for Free Speech in America* (Beacon, 2008), received the ALA/Intellectual Freedom Round Table's Eli M. Oboler Memorial Award in June, 2008.

Candace Morgan, chair of the Roll of Honor Selection Committee, was enthusiastic about Finan's work: "As is clearly evident from his record as a free expression and reader privacy activist, Chris has supported and forwarded the mission and work of the Freedom to Read Foundation for its entire existence. As he is rejoining the board the Roll of Honor Committee felt this was an obvious time to recognize his contributions."

Freedom to Read Foundation President Kent Oliver added: "It has been my pleasure to work with Chris for many years. His commitment to the First Amendment and the principles which the Freedom to Read Foundation represents is unsurpassed."

The award was presented at the ALA 2011 national conference in New Orleans on June 24.

The Freedom to Read Foundation Roll of Honor was established in 1987 to recognize and honor those individuals who have contributed substantially to FTRF through adherence to its principles and/or substantial monetary support. FTRF was founded in 1969 to promote and defend the right of individuals to freely express ideas and to access information in libraries and elsewhere. FTRF fulfills its mission through the disbursement of grants to individuals and groups, primarily for the purpose of aiding them in litigation dealing with freedom of speech and of the press. □

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censorship dateline …from page 142)

the call the Civic Center made on this one painting. ... We don't want to lose our ability to share the works of 90 other artists because one painting was upsetting the administrators."

"I was pleased that the Civic Center allowed a few other nudes in this show, as it is my understanding now that our previous exhibit coordinator had a 'no nudes' policy for Civic Center shows," she added. "The remaining pieces in the show are subtle and not as obvious to the viewer," and include a striking "nude silhouette portrait photograph."

Goodman, a painter and sculptor, reacted with disbelief to the rejection of her art. "I was speechless and at first I thought, 'this is a prank from one of my friends,'" she said of a phone call asking her to "get the painting out of Civic Center." She has a couple questions for the county administration:

"What about the rest of us, do we have a voice on this? Where does the censorship stop? Is this democratic? Which kind of message are we giving to our community? Is it OK in order to avoid conflicts to just 'give in' and be silenced? We are sheltering the public from a nude in an art contest, is this the dark ages all over again?"

Goodman, who grew up in Italy, noted that that country is graced by scores of nude statues. "Thank God nobody thought of taking those down," she said. "I guess we need to do some growing up here to catch up with the rest of the world. ... I am just shocked that such censorship will be allowed right here in beautiful, so-called, liberal Marin!"

The Civic Center flap recalled a widely-publicized 1995 controversy in which Mill Valley officials banned an artist's nude sketches from City Hall, then invited her back the next year under a policy declaring that nude art may be displayed if the city Art Commission found it had artistic merit. Reported in: Marin Independent Journal, April 11.

foreign

United Arab Emirates

The recent detention of a Sorbonne lecturer in the United Arab Emirates has rekindled the debate over the nature of academic freedom at Western institutions in the Persian Gulf region and the political impact those institutions, especially the high-profile new campus of New York University in Abu Dhabi, will have.

The arrest of Nasser bin Ghaith, a lecturer at the Abu Dhabi branch of the University of Paris IV (Paris-Sorbonne), who has participated in the Doha Debates, a respected regional political forum, leaves observers asking what freedoms the academics working at new Western branch campuses in the emirates will enjoy. "Are professors only protected in the ninety minutes when they are giving seminars, and after that they are fair game?" asked Samer Muscati, a researcher on the United Arab Emirates for Human Rights Watch.

Human Rights Watch and the New York chapter of the American Association of University Professors have called on the New York University administration to publicly ask for the release of bin Ghaith and three other political activists who have been detained. The latest arrest occurred April 15, according to a group known as the Gulf Discussion Forum.

"As the foreign university with the largest and most visible presence in the U.A.E., the NYU administration should speak out firmly against these violations of basic rights," said a letter signed by the leaders of the New York chapter of the American Association of University Professors, including Andrew Ross, a professor of social and cultural analysis at New York University.

Josh Taylor, a spokesman for NYU Abu Dhabi, said in an e-mail message that the administration will stay silent on the arrests. "We believe that we can have a far greater impact on creating a more informed, responsible, and just world, by creating powerful centers of ideas, discourse, and critical thinking, than by simply firing off a press release," Taylor wrote.

In the emirates, Human Rights Watch has focused on the rights of migrant laborers and freedom of expression on Saadiyat Island, the site where Abu Dhabi hopes to create a regional cultural center with branches of the Guggenheim Museum, the Louvre, and New York University "We're hoping it will be a human-rights benchmark for institutions not just in the emirates but in the gulf," said Muscati.

But Taylor said that the human-rights campaign has its sights set on an inappropriate target: "We're not sure what to make of it when an outside group tries to insist on setting a particular political agenda for an independent institution of higher learning."

Protesters have not been appearing in front of television cameras in the United Arab Emirates as they have been in many other Middle Eastern countries. But online discussion of increased political openness, wider participation in the government, and the need for economic and judiciary reforms has increased. (Political parties do not exist in the emirates, and there are no elections.) Two petitions calling for free elections and parliamentary democracy have circulated online, one in March and another one in early April, with the first one signed by 133 local academics, lawyers, and activists.

"Even though there are no protests in the streets," Muscati said, "We are seeing an unprecedented movement for reform."

The online activity is being met with crackdowns: In past months Human Rights Watch says authorities have blocked access to localnewsuae.com, a portal with articles and blog posts, and blocked access to the Facebook and Twitter pages of an emirates-focused online discussion forum, uaehewar.net.

As is often the case in the United Arab Emirates, who is doing what, and why, can be difficult to discern. Little can be found out about the detention of bin Ghaith, including whether the government has filed specific charges, what kind of due process will be followed, and if he will be allowed legal representation.

"It's very difficult to get information on this," said Muscati. "From what we understand, he is being held in Abu Dhabi and being interrogated there without a lawyer."

The 2010 human-rights report on the United Arab Emirates by the U.S. State Department, filed with Congress this month, states that "arbitrary and incommunicado detention remained a problem."

Bin Ghaith has argued for a more-effective judiciary system in the emirates that could cope with corporate malpractice, with some of his criticism clearly directed toward those investors and corporations behind the financial crisis in Dubai, one of the emirates. In the Doha Debates in 2009, however, he spoke against the motion that "Dubai is a bad idea," saying that although mistakes had been made during Dubai's construction boom, a "self-correcting mechanism" was in place.

At New York University's home campus around Washington Square, critics of the Abu Dhabi campus said the arrests showed that the project was a mistake to begin with. "Who thought up the idea of putting a college campus full of young liberals in one of the most unstable regions of the world?" said one student commenting on an article on NYU Local, a student-run blog.

A student at the Abu Dhabi campus commenting on the same article, identified as Nicole, wrote, "The student body doesn't feel that our academic freedom is in jeopardy; however, it has made everyone more aware of the boundaries between the academic community of Abu Dhabi and the public at large."

Paulo Lemos Horta, an assistant professor of literature at the Abu Dhabi campus, said he thought his efforts at the new campus were worthwhile and that he had not felt any difference between the freedoms he had as a professor in Abu Dhabi and those he had in his last job at Simon Fraser University, in Vancouver. "I feel like the most important thing is the work we can do within the institution," he said. "It is unclear how it would be more helpful for us to not be here than to be here. We are training a generation of students around the world in the tradition of liberal arts and academic freedom. Here they are at a coed institution, and there is no limit on what they can say."

Horta said, "Here, people enjoy rights that they don't have in the U.S. such as gay marriage. Does that mean you don't move to the U.S. or engage in the U.S.?"

Islands of academic freedom like NYU Abu Dhabi are certainly not new in the Middle East. The American University in Cairo, established in 1919, is probably the oldest example, with its on-campus events providing a forum for political discussion that did not exist elsewhere in Egypt for many years. At the King Abdullah University of Science and Technology, in Saudi Arabia, women are not required to cover themselves up and are allowed to drive, two freedoms they do not have elsewhere in the country.

In the emirates, Ross of NYU notes that "faculty and students at NYU Abu Dhabi have immeasurably more rights than longtime citizens of Abu Dhabi." Even arguments for academic freedom, he said, risk straying into illogical territory. The idea, for instance, that only academics should be protected, he says, is "not a very desirable argument for universities to be making."

He and others wonder if the free-speech rights experienced by expatriate artists and academics in Abu Dhabi will someday be enjoyed by others there. "It's good if some parts of the country have this freedom," said Muscati. "The hope is it will spread. It's not clear how." Reported in: Chronicle of Higher Education online, April 17. □

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He also said it was not at all clear that the Illinois case's conclusions would take hold, as several other federal courts have examined the issue, and the decisions "have gone both ways." Reported in: insidehighered.com, March 10.

Wilmington, North Carolina

In a ruling that breaks from other recent federal court decisions chipping away at the speech rights of public colleges' faculty members, the U.S. Court of Appeals for the Fourth Circuit held April 6 that the University of North Carolina at Wilmington could not deny a promotion to a faculty member, the prominent conservative commentator Michael S. Adams, based on writings that university administrators had deemed job-related.

Squarely tackling the question of whether the speech of a faculty member at a public college is covered by the U.S. Supreme Court's 2006 ruling in Garcetti v. Ceballos, which held that public agencies can discipline their employees for any statements made in connection with their jobs, a three-judge panel of the Fourth Circuit answered with an emphatic no.

"Applying Garcetti to the academic work of a public-university faculty member under the facts of this case could place beyond the reach of First Amendment protection many forms of public speech or service a professor engaged in during his employment," the appellate panel's unanimous decision said. "That would not appear to be what Garcetti intended, nor is it consistent with our long-standing recognition that no individual loses his ability to speak as a private citizen by virtue of public employment."

The ruling overturned a U.S. District Court's decision to reject Adams's assertions that the speech at issue in the case was constitutionally protected.

"Put simply," the panel said, "Adams's speech was not tied to any more specific or direct employee duty than the general concept that professors will engage in writing, public appearances, and service within their respective fields."

The panel's ruling noted that the majority opinion in Garcetti explicitly put off the question of whether the decision should apply to speech related to scholarship or teaching, and suggested that about the only faculty speech potentially covered by the Supreme Court's ruling is that stemming from a given faculty member's involvement "in declaring or administering university policy," which is "clearly not the circumstance" in the Adams case. The panel said the Fourth Circuit had previously declined to apply the Garcetti decision in a case involving the speech of a public-high-school teacher, and its belief that Garcetti should not be applied to speech involving scholarship or teaching "is equally—if not more—valid in the public university setting."

David A. French, who, as senior counsel for the Alliance Defense Fund, helped represent Adams in the case, cheered the Fourth Circuit's ruling as "a ringing victory for academic freedom," with language that "is very clear, and not only binding in the Fourth Circuit but, I hope, quite persuasive to the other circuits."

The ruling "deals a real blow to the idea that professors' speech is somehow wholly owned by the university. It is not," said French, whose organization, an Arizona-based alliance of Christian lawyers and like-minded groups, took up the case partly because Adams had accused the university of religious discrimination.

The University of North Carolina at Wilmington issued a statement in which John P. Scherer II, its associate general counsel, said that officials there were still reviewing the Fourth Circuit's ruling in consultation with the state attorney general's office.

Rachel Levinson, senior counsel of the American Association of University Professors, which signed onto a friend-of-the-court brief supporting Adams, issued a statement saying, "We are thrilled by the court's decision," which "recognized that the Garcetti decision—by its clear language—does not apply to scholarship or teaching by faculty at public universities."

The Fourth Circuit's ruling was far from a total victory for Adams, an associate professor of criminology who often writes opinion columns expressing conservative views and, in many, takes aim at the university's administration, faculty members, and staff. The three-judge panel endorsed the lower court's decision to reject Adams's claim that he was the victim of religious discrimination, holding that the presence of religious content in some of the writings university administrators considered in denying him a promotion did not amount to evidence that the university's decision was in response to his religious views. Based on its conclusion that Adams was not the victim of religious discrimination, the appeals panel also rejected his claim that his right to equal protection under the law had been violated.

But the Fourth Circuit panel held that Adams's claims to First Amendment protection were clear enough that the district court was correct in denying university officials' claim to immunity from being sued as individuals based on their assertion that their conduct did not violate any clearly established constitutional right.

The panel also rejected the district court's conclusion that the opinion columns written by Adams formally became work-related speech when he included them in his application for promotion. "The district court cited no precedent for this determination, that protected speech can lose its First Amendment-protected status based on a later reading of that speech," the panel's ruling said.

As a practical matter, the Fourth Circuit's ruling does not settle the case. If the university does not appeal, the district court will now have the task of determining whether Adams's commentaries were a substantial factor in the university's decision not to promote him and whether his speech should have been protected because his interest in speaking on matters of public concern outweighed the university's interests in determining for itself how to best serve the public.

Robert R. Hoon, general counsel for the university, issued a statement that said he was pleased that the professor's claims of violations of his religious-freedom and equal-protection rights had been dismissed. Noting that the appeals-court panel chose to send the case back to the district court for further review, he said the ruling "is not a victory for either the plaintiff or the defendant."

The AAUP has been concerned enough about the implications of federal courts applying the Garcetti decision, which involved a dispute within a district attorney's office, to public colleges that it has launched a national campaign urging such institutions to adopt policies or contractual provisions shoring up faculty members' speech protections. Before the Fourth Circuit decision, however, about the best news the AAUP had received on the legal front had been a November ruling by a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit, in a case involving an emeritus professor at the University of California at Irvine.

In that case, rather than squarely applying Garcetti, the Ninth Circuit held that the free-speech rights of professors are "far from clearly established" in the wake of the Garcetti decision. Reported in: Chronicle of Higher Education online, April 6.

public art

Augusta, Maine

A federal judge ruled April 22 that Gov. Paul LePage did not violate the free speech clause of the First Amendment when he ordered a mural removed from the headquarters of the Maine Department of Labor. The 36-foot-long mural depicting scenes from Maine's labor history was removed from the lobby of the Department of Labor headquarters in Augusta.

In a 45-page decision, Justice John Woodcock Jr. said that state-owned works of art are "government speech," and that political leaders are entitled to select the art that is displayed in state offices.

The judge denied the request of six plaintiffs for a temporary restraining order that would have compelled the administration to return the mural to the Labor Department's lobby.

LePage ordered the mural's removal in March, saying it offered a one-sided view of labor history that some business owners found offensive (see Newsletter, May 2011, p. 119).

While LePage's order may strike some people as an act of state censorship, Woodcock wrote in his ruling, it was a permissible exercise of gubernatorial authority. Woodcock said political leaders are entitled to express their views, and the resolution of the issue must not rest on the opinion of a federal judge. "It must rest instead with the ultimate authority of the people of the state of Maine to choose their leaders," he wrote.

Jeffrey Young, a lawyer who sued to have the mural returned, said he was disappointed by the ruling. He said the plaintiffs, including labor leaders and artists, are considering other legal options. "We may have lost this preliminary skirmish in the court of law, but we already have won in the hearts and minds of Maine people," Young said in a prepared statement.

At a town hall meeting in Topsham, LePage told a group of almost 200 people that the judge had thrown out the lawsuit. "We won," he said.

While federal money covered part of the cost of the $60,000 mural, LePage said the state's share came from a surplus in unemployment insurance premiums paid by employers. "When that money was used, (the employers) got no credit for it," he said. "I'm not trying to disgrace the worker, because from the time I was 11, I've worked every kind of job. I have no problem with the mural. I just have a major, major issue with deception."

The 11-panel, 36-foot-long mural depicts scenes from Maine's labor history, including two strikes, Rosie the Riveter during World War II, loggers, child laborers and textile mill workers. During a hearing on the case in U.S. District Court in Bangor, Maine Deputy Attorney General Paul Stern defended the governor's action as a form of "government speech."

Central to Stern's argument was a U.S. Supreme Court ruling in 2008 in a case involving Pleasant Grove City, Utah. That case was about whether the city could deny an obscure religion's request to display a monument in a public park, while the city allowed the display of a monument about the Ten Commandments. The Supreme Court ruled unanimously that monuments in public places should be recognized as the government's own speech, and that decisions about their placement are exempt from the free speech clause of the First Amendment.

Young countered that a mural is different from a monument. When most people see a painting, they assume it represents the viewpoint of the artist, not the government, he told Woodcock.

In his ruling, Woodcock sided with Stern. He said the relatively large size of the mural makes it obvious that it was intended to be a permanent piece of decor in the room and therefore express the views of the government, not just the artist.

"Like a monument in a public park, it seems the mural was contemplated as more of a fixture ... than as a temporary display of a private work," he wrote.

The plaintiffs sued the state on April 1, alleging that LePage's action had violated the First Amendment. They moved for a temporary restraining order on April 8. The plaintiffs also asked the court to order LePage and the other defendants -- acting Labor Commissioner

Laura Boyette and Maine State Museum Director Joseph Phillips -- to reveal where the mural is now, and to ensure that it is in good condition and protected.

Woodcock has not ruled on that issue. Reported in: Portland Press-Herald, April 23. □

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records requests to get data on the devices and their use by police, a claim that Brown denied.

"Since 2008, the MSP has worked with the ACLU to narrow the focus, and thus reducing the cost, of its initial Freedom of Information Act (FOIA) request," she said. "To date, the MSP has fulfilled at least one ACLU FOIA request on this issue and has several far-lower cost requests awaiting payment to begin processing."

The dust-up between the ACLU and the Michigan State Police has led to false information being spread by the media, Brown said.

"The implication by the ACLU that the MSP uses these devices 'quietly to bypass 4th Amendment protections against unreasonable searches, is untrue, and this divisive tactic unjustly harms police and community relations," she said. Reported in: Los Angeles Times, April 21.

prisons

Moncks Corner, South Carolina

Prisoners at a jail in South Carolina are being denied any reading material other than the *Bible*, according to the American Civil Liberties Union.

The ACLU filed a lawsuit challenging the "unconstitutional" policy at Berkeley County detention center in Moncks Corner on behalf of monthly journal *Prison Legal News* last autumn. In early May a request by the US Department of Justice to stand alongside *Prison Legal News* as a plaintiff in the lawsuit was granted by a federal judge, and the ACLU has now asked a federal judge to block enforcement of a policy which it claims sees the jail's officials "unconstitutionally refusing to allow prisoners to receive any materials that contain staples or pictures of any level of nudity, including beachwear or underwear", effectively banning most books, magazines and newspapers.

Last year's lawsuit quoted an email from a member of staff at the prison to *Prison Legal News*, which said that "our inmates are only allowed to receive soft back bibles in the mail directly from the publisher. They are not allowed to have magazines, newspapers, or any other type of books". It charges that, since 2008, copies of *Prison Legal News* and books – including *Protecting Your Health and Safety*, which explains legal rights to inmates – sent to prisoners at the jail have been returned to sender. There is no library at the Berkeley County detention center, the ACLU says, so that "prisoners who are incarcerated for extended periods of time have been deprived of access to magazines, newspapers and books – other than the *Bible* – for months or even years on end."

Officials at the jail responded to the ACLU lawsuit by saying that they only banned material containing staples and nudity. But the new ACLU motion to block this policy points out that legal pads containing staples were being sold at the jail. It claims that the no staples or nudity policy was "adopted post hoc and in response to this Case," and that it "eliminate[s] access to reading material almost as completely as the 'Bible only' rule."

"This is nothing more than an excuse by jail officials to ban books and magazines for no good reason," said David Shapiro, staff attorney with the ACLU national prison project. "There is no justification for denying detainees access to periodicals and in the process cutting them off from the outside world."

"Jail officials are looking for any excuse they can come up with to obscure the fact that they are unconstitutionally censoring materials sent to detainees," added Victoria Middleton, executive director of the ACLU of South Carolina. "And in so doing they are failing to serve the detainees and the taxpayers of South Carolina. Helping prisoners rehabilitate themselves and maintain a connection to the outside world by reading books and magazines is a key part of what should be our larger and fiscally prudent objective of reducing the number of people we lock up by lowering recidivism rates." Reported in: Guardian, May 10. □

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intellectual freedom bibliography

Compiled by Angela Maycock, Assistant Director, Office for Intellectual Freedom

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