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judge rejects Google book settlement

Google's ambition to create the world's largest digital library and bookstore has run into the reality of a 300-year-old legal concept: copyright. The company's plan to digitize every book ever published and make them widely available was derailed March 22 when a federal judge in New York rejected a sweeping $125 million legal settlement the company had worked out with groups representing authors and publishers.

The decision threw into legal limbo one of the most ambitious undertakings in Google's history, and brought into sharp focus concerns about the company's growing power over information. While the profit potential of the book project is not clear, the effort is one of the pet projects of Larry Page, the Google co-founder who became its chief executive in April. The project has wide support inside the company, whose corporate mission is to organize all of the world's information.

"It was very much consistent with Larry's idealism that all of the world's information should be made available freely," said Ken Auletta, the author of *Googled: The End of the World as We Know It*.

Citing copyright, antitrust and other concerns, Judge Denny Chin said that the settlement went too far. He said it would have granted Google a "de facto monopoly" and the right to profit from books without the permission of copyright owners. Judge Chin acknowledged that "the creation of a universal digital library would benefit many," but said that the proposed agreement was "not fair, adequate and reasonable." He left open the possibility, however, that a substantially revised agreement could pass legal muster.

Judge Chin was recently elevated to the United States Court of Appeals for the Second Circuit, but handled the case as a district court judge.

The decision was also a setback for the Authors Guild and the Association of American Publishers, which sued Google in 2005 over its book-scanning project. After two years of painstaking negotiations, the authors, publishers and Google reached a settlement agreement in 2008, a revised version of which was filed in late 2009. That "Amended Settlement Agreement" is what was rejected by Judge Chin. It would have brought millions of printed works into the digital age.

The deal turned Google, the authors, and the publishers into allies instead of opponents. Together, they mounted a defense of the agreement against an increasingly vocal chorus of opponents that included Google rivals like Amazon and Microsoft, as well as academics, some authors, copyright experts, the Justice Department and foreign governments.

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film

READ BANNED BOOKS

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Google book settlement …from page 85)

Now the author and publisher groups have to decide whether to resume their copyright case against Google, drop it, or try to negotiate a new settlement. Paul Aiken, executive director of the Authors Guild, said that it was too early to tell what the next step would be. "The judge did expressly leave the door open for a revised settlement," he said.

Hilary Ware, managing counsel at Google, said in a statement that the decision was "clearly disappointing," adding: "Like many others, we believe this agreement has the potential to open up access to millions of books that are currently hard to find in the U.S. today." The company would not comment further.

In his 48-page ruling, Judge Chin concluded that the settlement as proposed "would give Google a significant advantage over competitors, rewarding it for engaging in wholesale copying of copyrighted works without permission." He said the settlement would not only release Google "from liability for past copyright infringement" but from future liability as well, and it would "grant Google the right to sell full access to copyrighted works that it otherwise would have no right to exploit."

As it stood, Judge Chin wrote, the settlement would give Google "a de facto monopoly over unclaimed works," sometimes called orphan works, whose copyright owners aren't known or can't be found. He said federal lawmakers rather than private entities ought to figure out what to do with those works.

"The questions of who should be entrusted with guardianship over orphan books, under what terms, and with what safeguards are matters more appropriately decided by Congress than through an agreement among private, self-interested parties," he said. Under the settlement, Google would have created a Book Rights Registry to help identify who has claim to which works and to compensate rights holders for use of copyrighted material.

Google has already scanned some fifteen million books. The entire text of books whose copyrights have expired are available through Google's Book Search service. It shows up to 20 percent of copyrighted titles that it has licensed from publishers, and only snippets of copyrighted titles for which it has no license. Orphans make up roughly a fifth of the 15 million books in Google's digital archive.

The settlement would have allowed Google to go much further, making millions of out-of-print books broadly available online and selling access to them. It would have given authors and publishers new ways to earn money from digital copies of their works.

Yet the deal faced strong opposition. Among the most persistent objections, raised by the Justice Department and others, were concerns that it would have given Google exclusive rights to profit from millions of so-called orphan works. They also said no other company would be able to build a comparable library, leaving Google free to charge high prices for its collection. And some critics said the exclusive access to millions of books would help cement Google's grip on the Internet search market. Judge Chin also raised doubts about how fully the named plaintiffs represented the larger class of authors and publishers who would be covered by the settlement. He pointed to "the substantial question" of "antagonistic interests between named plaintiffs" and other authors and publishers.

"The academic-author objectors, for example, note that their interests and values differ from those of the named plaintiffs," the judge said. He went on to quote from an *amicus* brief submitted by Pamela Samuelson, a professor of law at the University of California at Berkeley, on behalf of some eighty professors objecting to the settlement. Samuelson wrote that academic authors "are committed to maximizing access to knowledge," while the plaintiffs "are institutionally committed to maximizing profits."

A number of higher education interests had sent letters to Judge Chin weighing in on the proposed settlement. Many in higher education voiced support for the settlement, including the University of Wisconsin at Madison, Abilene Christian University, the Association of Independent California Colleges and Universities, the United States Distance Learning Association, and the United States Student Association. Most cheered the possibility of broader and easier access to hard-to-get books.

"While inter-library loan reduces the inequalities among libraries, there is a financial cost as well as a delay for scholars requesting the work, with no guarantee that an individual book will even be useful to their research," Jeanine Varner, provost at Abilene Christian, wrote in a 2009 *amicus* brief. "Thus, the settlement is a significant change for the better by creating a means for us to offer immediate electronic access to crucial published resources."

But in a 48-page decision light on references to libraries, students, and research, Judge Chin appeared to find Professor Samuelson's brief the most persuasive among those filed by the academic petitioners. Samuelson had argued that it would be inappropriate for Google and the publishers to profit from the use of orphaned scholarly works—which she believes comprise a disproportionately large number of the orphans—when the academics who wrote them probably intended that they be as freely accessible as possible.

"Many academic authors … would prefer that orphan books be treated on an 'open access' or 'free use' basis rather than one where they would be controlled by one private entity," Chin wrote in a footnote, citing Samuelson's *amicus* brief.

The judge also cited the Berkeley law professor in noting that when Google began scanning collections at large research libraries in 2004, it did not state any intent to sell

access to those books later—a purpose that would have set off copyright-infringement alarms if it had been made explicit. "The Google Book Search initiative envisioned in the [agreement] is not a library," the judge wrote in another footnote, quoting Samuelson directly. "It is instead a complex and large-scale commercial enterprise in which Google—and Google alone—will obtain a license to sell millions of books for decades to come."

In sum, Judge Chin concluded, the settlement does not meet the "fair, adequate, and reasonable" standard he is charged with applying. But he pointed out that many of the concerns he raised would be dealt with if the agreement, referred to as the ASA in the ruling, required rights holders to opt in—by asking to have their works scanned and included in the Google Books project—rather than forcing them to opt out. "I urge the parties to consider revising the ASA accordingly," the judge wrote.

When the Justice Department suggested as much last year during a court hearing, Google rejected the idea as unworkable. It would leave millions of orphan works out of the agreement and out of Google's digital library, greatly diminishing its value to Google and to the public.

"Opt-in doesn't look all that different from ordinary licensing deals that publishers do all the time," said James Grimmelmann, a professor at New York Law School who has studied the legal aspects of the agreement. "That's why this has been such a big deal—the settlement could have meant orphan books being made available again. This is basically going back to status quo, and orphan books won't be available."

Some longtime opponents of the settlement hailed the decision, saying that they hoped it would prompt Congress to tackle legislation that would make orphan works accessible.

"Even though it is efficient for Google to make all the books available, the orphan works and unclaimed books problem should be addressed by Congress, not by the private settlement of a lawsuit," said Professor Samuelson.

Gina Talamona, a Justice Department spokeswoman, said in a statement that the court had reached the "right result."

A group of publishers said they were disappointed by the decision, but believed that it provided "clear guidance" on the changes necessary for the settlement to be approved. John Sargent, the chief executive of Macmillan, spoke on behalf of the publishers, which included Penguin Group USA, McGraw-Hill, Pearson Education, Simon & Schuster and John Wiley & Sons.

"The publisher plaintiffs are prepared to enter into a narrower settlement along those lines to take advantage of its groundbreaking opportunities," Sargent said in a statement. "We hope the other parties will do so as well." He added: "The publisher plaintiffs are prepared to modify the settlement agreement to gain approval. We plan to work together with Google, the Authors Guild and others to overcome the objections raised by the court and promote the fundamental principle behind our lawsuit, that copyrighted content cannot be used without the permission of the owner, or outside the law."

Some university librarians noted that the settlement's demise has scuttled, at least for the time being, the goal of low-cost library subscriptions to the enormous Google catalog. But they also raised hopes for a legislative solution that would sidestep the concerns about monopoly that the Google settlement raised.

"The decision does not dim our hope that a path can be found for public access to out-of-print works," the University of California Libraries said. "Many academic fields are dependent on this cultural record, and its conversion to digital form is the necessary basis for future innovation in scholarship." The university's libraries have contributed more than three million books to Google's book-digitization project.

California's statement reminded users that much of what's been digitized by Google and its research-library partners has become part of the HathiTrust Digital Library, a large-scale repository that draws on the collections of 52 partner institutions. That digitized material "was obtained in large measure through the Google partnership," the California libraries said.

"Libraries are not leaving the future of digital books to Google," the HathiTrust Digital Library said in its own statement, posted on its Web site. "HathiTrust will maintain our commitment to long-term digital preservation of library collections curated by generations of librarians at great research libraries around the world."

HathiTrust said it would continue to provide "full-text search of the repository" as well as appropriate uses of in-copyright material. About 2.2 million of the repository's 8.4 million volumes are in the public domain and accessible on the Web; the rest are under copyright. All that will remain in HathiTrust regardless of what happens with the settlement, and their digitizing work continues.

"We will continue to strive to provide as much access as legally possible to materials in the repository for discovery, reading, and computational research," the trust said.

John P. Wilkin, HathiTrust's executive director, said the ruling did not take the group by surprise, and that he expected Google would continue its digitization work. "Judge Chin's analysis made sense," he said. "It doesn't change what we're doing at all in HathiTrust."

What does change, from the trust's perspective, is the chance to give more people access to the abundance of material scanned by Google and its partners. Wilkin talked about "what might have been possible" if the judge had approved the settlement. Low-rate library subscriptions to the Google corpus, for instance, could have put it within reach of people who can't easily find or read that material now.

"That was something that we fought hard to get into the settlement," Wilkin said. The Google library "would have been an amazing treasure trove for people who don't have access everywhere. I think that's a real loss."

Responding to Judge Chin's suggestion that clearing up the uncertainty over the status of orphan works was best left to Congress rather than to private entities like Google, HathiTrust said it hoped that "the rejection of the settlement will lead immediately to meaningful progress toward orphan-works legislation."

There has been renewed talk about a coalition, maybe—but not necessarily—led by Google, to push for such legislation action. "We would throw our weight behind that," Wilkin said. "This has to be one of the outcomes" of the case, he said: "a legislative framework—not just in the United States but around the world—on orphan works." Orphan-works bills have been introduced over the past few years, most recently in 2008, but so far none has become law.

The trust has been gathering data on just how big the orphan-works problem is, "trying to get some bibliographic certainty" on the problem, the executive director said. "I don't think for many years to come that we're going to see a public-domain corpus of more than about 30 percent" of the books available, he added. Having more data, he said, might encourage lawmakers to take action on the issue more quickly.

Orphan works were also very much on the mind of Michael A. Keller, the Stanford University librarian, who released a statement about the ruling. "Congress has considered watered-down solutions for access to these books for years, but only this project imagined universal widespread access to them," Keller said. He lamented that the decision "leaves unanswered several important questions, including access to orphan works, periods of protection provided by the Copyright Law, and the yearning for a universal library available to all American citizens." As for what happens next, Keller said that the university was analyzing the ruling and would consult with Google and its other library partners before it decides how to proceed.

An orphan-works bill isn't the only solution being proposed to put orphan works within reach of more users. The issue is likely to figure in the planning conversations surrounding the proposed Digital Public Library of America, for instance.

One strategy, extended collective licensing, or ECL, has been generating a lot of interest among librarians and copyright reformers, said Peter Brantley, director of the Internet Archive's BookServer project. He's also a co-founder of the Open Book Alliance, whose members include Amazon.com and Microsoft. (The alliance weighed in against the Google settlement, filing a brief opposing it in 2009.)

The ECL approach works like this: Certain uses of copyrighted material—research that does not have a commercial application, for instance—might get a free pass, while more-commercial uses would trigger a licensing fee. The approach took off in Scandinavia, said Brantley, and has had some success in Europe. One big challenge, though, is how to create an entity—ideally on the national level—that would administer the system. That may be more easily done in Europe, where many countries are more accustomed to approaching such issues on a national level. It's possible that the Books Rights Registry Google created under the proposed settlement could be repurposed to do that, but that depends in large part on what Google decides to do, and the company's not saying yet.

Brantley said he hoped the ruling stimulated discussion of how "to create legislative frameworks that enable us to broaden access to materials whose rights status is uncertain." But he said that, as far as he knew, "there have been no explicit approaches on the Hill to enlist support for a new proposal. It's too early in the process for that."

Prue Adler, associate executive director of the Association of Research Libraries, said the association's members "are really hungry for understanding" of the ruling and what it means. The association has asked Jonathan Band, a copyright expert, to analyze the decision and write a guide for the group's members explaining it and what may lie ahead.

The association did not take a pro or con stance on the proposed settlement. Along with the American Library Association and the Association of College and Research Libraries, it did raise privacy and antitrust concerns about it and questioned whether academic libraries' interests were adequately represented. As for action on the legislative front, "the library community worked long and hard for a constructive and practical orphan-works bill" in recent years, Adler said, but those efforts were unsuccessful.

Siva Vaidhyanathan, a media studies professor at the University of Virginia and a notable Google gadfly, said the company overplayed its hand by essentially trying to rewrite the rules governing the copying and distribution of book content through a class-action settlement. "Google clearly flew too close to the sun on this one," he wrote. "This is not what class-action suits and settlements are supposed to do."

Vaidhyanathan said that Google now faces the choice of either continuing to fight for its interpretation of copyright law in the courts or scaling back its plans for a digital bookstore. "If Google decides to take the modest way out, it can still ask Congress to make the needed changes to copyright law that would let Google and other companies and libraries compete to provide the best information to the most people," the media scholar says. "Congress should have been the place to start this in the first place."

Google could now petition for a writ of certiorari and make its case to the Supreme Court. But if Google instead tries to further amend the settlement agreement to Chin's liking, it will be in a substantially weaker bargaining position given the judge's ruling. Whereas the current form of the settlement required authors and publishers to actively "opt out" or else relinquish their rights to Google, Chin said that he would prefer a settlement that stipulates that copyright holders retain their rights by default.

"One imagines that the publishers will be more aggressive in renewed settlement discussions," said Joseph Esposito, a consultant who advises scholarly publishers.

Some in higher education who had heralded the proposed settlement agreement said they were disappointed by the decision.

"Ultimately the balance between the rights of copyright owners and users has to be balanced—but in my opinion the proposed settlement achieved that balance," said Jonathan A. Brown, president of the Association of Independent California Colleges and Universities, who had written in support of the settlement in 2009.

"I do feel disappointment with regard to the loss of access the [agreement] would have made possible," said HathiTrust's Wilkin, who is also an associate university librarian at the University of Michigan, which has been one of Google's closest collaborators. "Here we should keep in mind the range of things [it] would have made possible, not only opening a vast collection to library users everywhere, but facilitating perhaps the broadest provision of services to users with print disabilities anyone ever conceived," Wilkin wrote. "These would have been game-changers not only for higher education but for constituencies that are largely neglected."

But Esposito said that academics and students constitute only a small portion of the potential stakeholders in the Google Books case, and those who were disappointed by Judge Chin's decision would do well to be humble in their lamentations. "It is widely assumed that the digitization of so many books would have a significant positive benefit for higher education," Esposito said. "I think that is just plain wrong. There is a reason books went out of print in the past, a reason that orphans are orphans. These are books of marginal value to higher education, as the historical lack of demand demonstrates.

"The higher education community flatters itself to think that the Google mass digitization project and the proposed settlement was about them," he continued, "but the real object in this case from the beginning was the establishment of legal precedents for future disputes about copyright and the access to texts by machines, in part motivated by the prospect of the commercialization of data-mining techniques." Reported in: *New York Times*, March 23; *Chronicle of Higher Education* online, March 22, 23; insidehighered.com, March 23. □

book banners find power in numbers

On the website Parents Against Bad Books In Schools, some of the works deemed "sensitive, inappropriate and controversial" for K-12 students, even those who are college-bound or in advanced placement classes, include Cormac McCarthy's *All the Pretty Horses*, Richard Wright's *Black Boy*, Tim O'Brien's *The Things They Carried* and Gabriel Garcia Marquez's *One Hundred Years of Solitude*.

"Bad is not for us to determine," says the disclaimer on the site. "Bad is what you determine is bad." One of the purposes of PABBIS.org, the disclaimer goes on to say, is to "provide information related to bad books in schools."

Of course, "bad" is a relative term, and one person's obscenity is another person's Pulitzer or Nobel Prize winner. Yet websites like PABBIS.org and Safelibraries.org have become the vanguard for organized attempts to ban books from public libraries and school curricula.

"There are organized groups on the Internet whose purpose is to remove books from libraries because they believe they may be inappropriate for children," said Deborah Caldwell-Stone of the Office for Intellectual Freedom of the American Library Association. "Traditionally, when books are challenged, it's usually a single parent. But we have found that groups are organizing around the principle that professional librarians don't have the expertise, that they're pushing porn on our kids."

"Groups of parents are getting together and organizing in their communities to ban books," adds Joan Bertin of the National Coalition Against Censorship. "I think what's happening is once a book is challenged in one town, people on the same wavelength, it will flag that book for them. For example, we've seen three challenges to Sherman Alexie's teen novel *The Absolutely True Diary of a Part-Time Indian*, all within the past three months, two in Missouri, one in Montana."

Some other recent incidents:

- Self-identified members of the 9.12 Project, a conservative watchdog group launched by Glenn Beck, succeeded in removing *Revolutionary Voices: A Multicultural Queer Youth Anthology* from a high school library in Burlington County, N.J., a Philadelphia suburb.

- A fight over library books featuring sex and homosexuality inflamed the town of West Bend, Wisconsin, north of Milwaukee, and led four men to threaten to publicly burn *Baby Be-Bop*, a novel about a gay teenager.

- In Hillsborough County, Florida, which includes Tampa, parents objected to the inclusion of Augusten Burroughs' memoir *Running With Scissors* on the suggested reading list of an English AP course. Out of nine high schools, two banned the book outright, and the other seven either required parental consent to read it or placed a "Mature Reader" label on the front cover.

"Books written for an adult audience are not frequently challenged," says the ALA's Caldwell-Stone. "The vast majority that are challenged are written for young people or provided

to young people as part of an AP class. [Grounds include] profanity, sexually explicit, simply talking about having sex, or homosexuality. Books have been challenged simply because they had a homosexual character, and there was no sex in them. Unsuited to age group is a big complaint."

"We have always seen a lot of challenges around sex," Bertin added. "Of course, gay and lesbian sex is even a hotter topic. Teenage sex is a big thing. And the sex issue ties in with religion, which goes by the code name of family values—these are not the values we want to teach our children, we don't want them to know about casual sexual activity."

This is not to say that some of the most challenged perennials—*Huckleberry Finn*, *Beloved*, the Harry Potter books—aren't still fighting off the censors. But there has been a change in what kinds of books are being attacked, and the ways in which those challenges are handled. Whereas a decade ago, evangelicals seemed to concentrate on removing books about witchcraft and secular humanism from libraries, now the emphasis is definitely on sex, particularly of the homosexual variety. (Although there are always outliers, like bowlderizing *The Cartoons That Shook the World* because of panels showing the Prophet Mohammed, or keeping minors from seeing Barbara Ehrenreich's book on the working poor, *Nickel and Dimed*.) And the book banners seem to be concentrating on award-winning literature taught in advanced high school classes.

"The fact people say AP high school students shouldn't be reading *Beloved*, or *Bookseller of Kabul*, what I fear this indicates is that these are people who believe no one should be reading these books," Bertin says. "In their view, these books are the product of a corrupt and immoral society, and they don't want to have anything to do with it."

There is, of course, a fine line being danced around here. What's appropriate for one student might not be for another of the same age. Librarians, teachers and parents can help make these determinations, but, Caldwell-Stone says, "It shouldn't be one parent deciding what's appropriate for every 12-year-old. This is a pluralistic society; not everyone shares the same values, and publicly funded schools and libraries have to serve the public."

Caldwell-Stone said about 25 percent of all challenges are successful, and that challenges often occur without being mentioned in the press because many librarians are afraid of losing their jobs and hesitate to report what's happening.

The number of known challenges has remained relatively constant. The ALA says they've had as many as 700 in a given year, and as few as 380. The numbers generally come out in the 400-500 range (there were 460 challenges in 2009, the latest year for which figures are available). So the problem is not that there's a major uptick in complaints, it's that the challengers are starting to organize.

In that sense, they've taken a page from the opposition—the annual Banned Books Week was first organized in 1982 to highlight the issue, and it's currently sponsored by organizations like the American Library Association, the American Booksellers Association, the American Booksellers Foundation for Free Expression, the Association of American Publishers, the American Society of Journalists and Authors, and the National Association of College Stores.

"We never have a problem with people who don't want their own kid to read a book," Bertin says. "We have a problem with people who feel these books are corrosive to the culture, and they don't want them taught in schools. They think it's immoral and offends their religious values, whether they're Jewish, Christian or Muslim." Reported in: miller-mccune.com, February 10. □

Facebook, Twitter absent from free speech pact

When Google, Yahoo and Microsoft signed a code of conduct intended to protect online free speech and privacy in restrictive countries, the debate over censorship by China was raging, and Internet companies operating there were under fire for putting profit ahead of principle. It seemed the perfect rallying moment for a core cause, and the companies hoped that other technology firms would follow their lead.

But three years later, the effort known as the Global Network Initiative has failed to attract any corporate members beyond the original three, limiting its impact and raising questions about its potential as a viable force for change.

At the same time, the recent Middle East uprisings have highlighted the crucial role technology can play in the world's most closed societies, which leaders of the initiative say makes their efforts even more important.

"Recent events really show that the issues of freedom of expression and privacy are relevant to companies across the board in the technology sector," said Susan Morgan, executive director of the initiative. "Things really seem to be accelerating."

But the global initiative is not. All of the participating companies are American. Also, Facebook and Twitter are notably absent despite their large audience and wide use by activists, in the Middle East and elsewhere.

Bennett Freeman, senior vice president of the mutual fund company Calvert Investments and a G.N.I. board member, pointed out that the three current members were among the biggest Internet companies, but acknowledged that "we are going to have to add some new companies soon to be truly influential."

The biggest test yet for the initiative comes later this year, when member companies are judged on whether they have adequate policies in place to address privacy and free speech issues. Independent auditors will issue a report after examining whether the companies narrowly interpret government demands for user information and whether they

store users' data in countries where free speech is protected, for example. Next year, the companies are to undergo a more thorough review of whether they lived up to the code of conduct's principles.

The initiative was created in 2008 after human rights groups and politicians condemned the top Internet companies for complying with China's restrictive laws rather than jeopardizing their business interests by challenging them.

Yahoo had turned over data that led to the imprisonment of several Chinese activists. Microsoft had shut down a blog by a Chinese journalist who worked for *The New York Times*. Meanwhile, Google had introduced a censored search engine in China (although the company has since shut down that site).

The initiative is modeled on previous voluntary efforts aimed at eradicating sweatshops in the apparel industry and stopping corruption in the oil, natural gas and mining industries. As with those efforts at self-regulation, this one came at a time when Internet companies were seeking to polish their image and potentially ward off legislation.

The code of conduct says that companies must try "to avoid or minimize the impact of government restrictions on freedom of expression" and protect user privacy when demands by government "compromise privacy in a manner inconsistent with internationally recognized laws and standards."

In practice, however, the code offers flexibility. Companies that go along with a country's censorship requirements can remain in compliance as long as they disclose it, as Microsoft does with its censored search results in China.

A number of participants, which also include human rights groups, academics and firms specializing in socially responsible investing, agree that the initiative started slowly. Much of the focus since its founding has been on getting organized and hiring.

Originally, the membership was supposed to include the entire spectrum of software, hardware and telecommunications firms along with Internet companies. The idea was that a bigger roster would mean greater influence and credibility.

But recruiting efforts have been fruitless. Some companies have cited the auditing process as being too onerous, according to Global Network Initiative participants who spoke on the condition of anonymity because they did not want to discourage companies from joining in the future. Other companies do not see any financial benefit or think they can do it alone.

Andrew Noyes, a spokesman for Facebook, declined to address why Facebook had not joined. But he said that his company took seriously the issue of user trust and was in regular contact with governments and human rights groups.

"As Facebook grows, we'll continue to expand our outreach and participation, but it's important to remember that our global operations are still small, with offices in only a handful of countries," Noyes said.

Where the initiative has been most effective so far is in creating a forum for companies to easily get advice and share ideas. For instance, as the initiative's participants were creating the code of conduct, human rights groups contacted Google after it removed videos in 2007 from YouTube showing police abuse in Egypt because of guidelines prohibiting violence. Google ultimately decided to restore the videos and adjust its policy to allow such clips.

Some human rights groups said the initiative's code of conduct was weaker than they would have liked. Getting companies to sign on would have been impossible otherwise, they acknowledged, describing the code's final version as the best that could be hoped for at the time.

Even with the code of conduct to help guide them, companies will inevitably come across issues that have no easy answers, said Rebecca MacKinnon, a senior fellow at the New America Foundation who specializes in online privacy and is a participant in the initiative.

"Most of these issues aren't black and white," MacKinnon said. "The idea is to help them do the right thing rather than play 'gotcha' after they mess up." Reported in: *New York Times*, March 6. □

creationists try new tactics

More than eighty years after the famous "Scopes Monkey Trial" in Tennessee, creationism proponents are pushing for state legislation there that could make it easier for teachers to bring unscientific ideas back into the science classroom in public schools. To bolster their cause, the backers of the new bills are invoking none other than teacher John Scopes, the trial's pro-evolution defendant, as an icon of independent thinking.

"…[T]oday's evolutionary scientists have become the modern-day equivalents of those who tried to silence Rhea County schoolteacher John Scopes for teaching evolution in 1925, by limiting even an objective discussion of the scientific strengths and weaknesses of evolutionary theory," David Fowler, head of the Family Action Council of Tennessee and chief lobbyist behind Tennessee's proposed anti-evolution bill, wrote recently.

Scopes had been charged with violating the Butler Act, which prohibited the teaching of evolution in public schools. Thus, creationists say, he certainly would have supported a law that encouraged the teaching of all sides of "controversial issues"—such as the bill some are working to pass in Tennessee as part of a post–intelligent design (ID) campaign to teach the "strengths and weaknesses" of evolution. If adopted, this language would send a positive message to teachers inclined to introduce creationism and ID into the classroom when discussing biology and the origins of life.

Following the drubbing they received in the constitutional test case of *Tammy Kitzmiller* v. *Dover Area School*

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censorship dateline

libraries

Fairbanks, Alaska

A school district committee has recommended that high school libraries continue to offer the book *Betrayed*. The book had been under evaluation by the committee and the Fairbanks North Star Borough School District for several months. *Betrayed* is part two of the "House of Night" series by P.C. and Kristin Cast.

The committee held a public hearing February 8, the second step in the process that followed a request for reevaluation of the book. The committee of parents, teachers and administrators was created by Superintendent Pete Lewis. Its recommendation will be forwarded to him. Lewis will decide by April 1 whether to keep the book in the district's high school libraries or ban it, according to Assistant Superintendent of Secondary Schools Wayne Gerke.

At the hearing, Ken Spiers, who brought the book complaint forward, spoke for ten minutes on the reasoning behind his complaint. "It simply causes kids to think even more of things sexual," Spiers wrote in his original complaint about the teenage vampire novel.

If Spiers is not satisfied with the superintendent's decision, he can take his case to the school board.

Gerke and the Director of Library Media Services Katherine Sanders also spoke for ten minutes about why, in step one of the reevaluation process, they decided not to ban the book. In December, Gerke and Sanders decided to keep the book in schools' libraries after reading it and its reviews, and considering its audience. Reported in: *Fairbanks News-Miner*, February 10.

Hartford, Connecticut

The Connecticut Department of Correction will review its library collections after learning that Steven Hayes, convicted in a 2007 Cheshire home invasion, read books in prison depicting violent murders and the burning of victims. The new rules for Connecticut's prison libraries will be in place around July 1.

Leo Arnone told the legislature's Judiciary Committee March 21 that committees in each prison will come up with policies for approving books. The Department of Correction receives most of its books from donations.

State Sen. John Kissel proposed a bill requiring the department to review the federal rules. "I think most people's common sense view on this issue is that violent inmates should not have access to books that graphically depict violence against people, especially women," said Sen. Kissel.

Kissel said most of the book Hayes read had graphic details about strangulation, rape and murder. Many of the books were donated and the prison systems needs to review the books and decide which may not be suitable. The reading list includes David Baldacci's *Split Second*, Greg Iles' *Mortal Fear* and *First To Die*, by James Patterson.

David McGuirea with the ACLU believes this is censorship and was skeptical about who decides what books are OK and which aren't. "If a prison has a legitimate safety and security reason, they can prevent someone from reading about escaping from prison or building a bomb, but a well-respected book with murder plot should not be censored," he said.

Attorneys for Joshua Komisarjevsky, who faces trial for a fatal home invasion in Cheshire, recently filed court papers saying that before the deadly crime, his co-defendant Hayes read a violent book while in prison. Hayes was convicted in December and sentenced to death. Reported in: wfsb.com, March 21.

St. Augustine, Florida

St. Johns County residents at a workshop March 9 urged the Library Advisory Board to install electronic filters on the library system's 185 computers to help prevent children from potentially accessing pornography. No specific instances of a child accessing pornography at the Southeast Branch Library were mentioned. But the parents believe filters will prevent the access and say they're willing to forego absolute Internet freedom in exchange for a more secure computer environment for children.

The workshop at the library was called to provide the Advisory Board with information about filters and their capabilities. The board was set to decide in April what recommendation it will send to the County Commission.

Deborah Rhodes Gibson, director of the county's library system, said all six county libraries already protect children with "professional filters"—staff members who monitor Internet use to prevent inappropriate sites from being accessed. "Over the years, this has worked very well for us," Gibson said. "It's even stricter than filters."

The unpaid Advisory Board is a liaison between the library system and the County Commission.

St. Augustine attorney Brendan J. O'Connell wrote in a January newspaper opinion piece that 83.4 percent of Florida libraries have installed filters on computers. O'Connell told Gibson, "Somebody's got to walk up and down to police (those computers). Is this the situation you want to put your staff into?" He said a 2000 U.S. Supreme Court ruling requires filters, adding that they'd cost the county nothing.

"The Supreme Court case is the current law of the land," O'Connell said. In fact, while the Court ruling permits public libraries to install filters it does not require them to do so.

O'Connell was backed by Ed Mulvey of St. Augustine Beach, who asked, "Why are you holding back and causing difficulties for children? Any child could come here and access sites."

A study conducted from 2000 to 2008 showed that filters can "overblock" or "underblock." That means some sites that provide inoffensive research can be blocked, while some offensive sites get through the block. Library officials believe this impedes research, though library patrons can ask that the filter be removed.

Another major issue is a library patron's First Amendment right to freedom of speech, since Internet sites are considered speech in the "limited public forum" of a library.

According to Whitney Curtis, a librarian with Stetson University College of Law, "As much as we wish, technology has not caught up to our expectations to what it could do. A study by the Kaiser Family Foundation showed that filters block health information, including a site for the Centers for Disease Control." In addition, Curtis said, filters retain user information which can later be accessed by library staff, causing questions about the security of information and privacy.

Phil McCormick of Summer Island asked, "If some kid comes in here with a WiFi, would he be able to call up (inappropriate) sites?" The answer: "Yes." However, hardware is available for a $14,000 per year licensing fee to prevent it.

Gibson said that, since January, the administration has received 11 complaints from parents, but most were after their child saw inappropriate content on a screen when passing it.

O'Connell said, "It's very simple. You're telling us that the children of this county are free to come in here and access pornography."

Carrie Hartley, a mother of four, said she doesn't come to the library because of the chance that one of her children might see inappropriate content. "I can't watch them all at the same time," she said. "I choose to stay home."

A young father of four called pornography "harmful to children, setting them up for potentially huge emotional things in the future. The filters are not 100 percent, so the solution is to combine the filters with the library's supervision. It's a way to add security and safety to our children."

Annette Capella, a former teacher and administrator, said she was concerned about privacy issues with software that retains user information. She added that interaction, education and rational judgment, not filters, would keep children from content they shouldn't see. "We can't protect them from the world, but you can educate them about the world," she said.

Patricia Laurencelle of St. Augustine Beach, an Advisory Board member since 1989, said the St. Johns County Library has developed into one of the "superior" libraries in the country. "Personal intervention is better than inefficient electronic means of diverting information in an attempt to protect the innocence of children," she said. "We intervene at all sorts of points. We have done so over a whole generation of children." Reported in: *St. Augustine Record*, March 10.

Horry County, South Carolina

Everette Bibb was in for a big surprise when a fellow parent called to tell him the book *Push* could be found in their children's school library. "If this book gets into my daughter's hands, I'll be furious," Bibb says. His daughter, who is 14 and in 8th grade at Forestbrook Middle School, is one of hundreds of students he says was told about *Push* through an extracurricular reading list.

The book is a 1996 novel about Precious Jones, an illiterate 16-year-old, who grows up in poverty. Precious is raped by her father, battered by her mother, and dismissed by social workers as a Harlem impoverished youth. The story follows Precious, pregnant with a second child by her father, through her journey of learning how to read and be on her own. The novel was made into a critically acclaimed movie, *Precious*, in 2009, winning Academy Award and Sundance Film Festival praise.

It contains profane language on almost every page, including the n-word and f-word. There are also graphic depictions of rape and abuse scenes.

Horry County Schools spokeswoman Teal Britton said the book was available for about a week, but copies—which were found at middle schools, Conway and Myrtle Beach high schools, and Early College—were pulled February 18 and sent back to the district office.

The book came from a vendor, who had been instructed to select books on diversity, Britton said. It was sent out for classroom libraries without the district's knowledge, and officials were alerted by a parent whose child referenced the title.

"We would never knowingly have chosen that book and wholeheartedly agree it was not an appropriate selection for the classroom," Britton said. "It may have been OK in another community, but the material really requires a

mature person to process the harshness of the language and the harshness of that life story."

Bibb, along with about thirty people including many members of the Grand Strand Tea Party, petitioned the Horry County Board of Education requesting the book be pulled from all schools district-wide.

"It's basically smut," Bibb said. "The teachers have to do what they're told. Are there no check and balances between the classroom and the state that look over these books and see?"

School Board Chairman Will Garland said he was not aware of the issue at all prior to the meeting. "I have received no calls or emails," he said.

Bibb said he wasn't satisfied with the board meeting. He says he wants others to be held responsible for the fact the book even got into the schools in the first place.

Britton said parents can follow a process to challenge books on the approved middle school reading list, which is 63 items long. The first step, she said, is appealing to the school's principal, then the district. She added that the novel *Push* will remain on bookshelves in three high school media centers.

"I think it's about creating opportunities, but there should be balance, and we have a responsibility to protect children from some of the language and themes they aren't mature enough to process," she said. Reported in: carolinalive.com, February 28; *Myrtle Beach Sun-News*, March 1.

Ashland City, Tennessee

A parent's complaint about an AIDS memoir in the library at Cheatham Middle School led to the book being pulled from general circulation. The Cheatham County School Board voted to change its policy on library books to allow the director of schools to remove a book on an emergency basis after a complaint is received. A committee would then review the material to decide whether the book should be allowed in the library.

Parent Misty Binkley filed the complaint when her daughter brought home an anthology, *Writers' Voices,* with a selection from a book by author Paul Monette, *Borrowed Time: An AIDS Memoir*. The memoir chronicles how Monette coped with a lover's death from AIDS. The book talks frankly about past promiscuity and uses the "f" word.

"I just think that a 12-year-old seventh-grader doesn't need to be reading that material. It may be appropriate for older kids," said Binkley.

School policy was changed after Binkley's complaint. The previous policy kept challenged books available in the library until two weeks after the review process was complete. Now the book is removed and a decision is made within 48 hours.

Director of Schools Tim Webb said he is happy that parents are concerned and involved in books their children are reading. Reported in: wsmv.com, February 17.

Carrollton, Texas

When Rose Schifferdecker opened a book from the children's section of the Carrollton library, she couldn't believe her eyes. She said it describes sex. The Carrollton mother babysits three young children. She took them to the library and the 9-year-old picked out a book titled, *My Mom's Having a Baby*.

At the time, Schifferdecker said she didn't think anything of it. "I told the kids, 'Go ahead. Everybody get three books each,'" she said. "I've always felt it was safe. Go ahead. Get what you want."

It wasn't until she got home that Schifferdecker realized what was inside the book. "I was just shocked, shocked at what I saw and then what I read. It was unbelievable to me that it's considered a children's book," she said.

The book reads, "The man puts his penis between the woman's legs and inside her vagina. After a while, a white liquid shoots out of the man's penis and into the woman's vagina. The liquid is full of millions of sperm." It also contains illustrations of anatomically correct male and female sex organs and a man on top of a woman.

"I've always considered myself open minded. And I knew without a doubt when I read it that this was wrong. It's inappropriate for that age group," Schifferdecker said.

Author Dori Hillestad Butler said the book isn't for everyone. It also wasn't written for children to read alone. "*My Mom's Having a Baby* received an Editor's Choice award from *Booklist* in 2005. It was also named a Top Ten Sci-Tech book for Youth. But I'll be the first to tell you that this is not a book for everyone. I didn't write it for everyone. I also didn't write it for children to read by themselves. I wrote it for parents to read with their children."

"I know that some families are reading this book with their children when they are as young as four. Others are reading it with 10-year-old children and still others aren't reading it at all. And that's okay. Every parent has not only a right, but also a responsibility, to decide what's appropriate for their own children to read. But no one parent has the right to decide what other parents can read with their children," she said.

Schifferdecker doesn't believe the book belongs in the children's section of a public library where any child could pick it up. Library administrators said there is a system in place to review books. myfoxdfw.com, February 22.

schools

Gainesville, Florida

Pro-Islam views in our schools' social studies textbooks? Gainesville High School teacher Diane Ried

doesn't see it. "Not true," the veteran teacher said. But grass-roots groups across the state, fueled by Broward County-based Patriots United, have attacked textbooks for that very reason, just before the state Department of Education takes up a committee to adopt new social studies books.

It's not surprising, a local expert said. Ideological complaints about textbooks tend to reflect what energized groups consider the bogeyman of the time.

A local "textbook action team" sent an e-mail in January to Alachua County School Board members, warning that "our students are being taught false information." Four textbooks in question were accused of having pro-Islam and anti-Christian, Jewish or Israel leanings. The texts are a U.S. history book *The Americans*, a seventh-grade world geography book *The World and Its People*, a ninth-grade *World History* text, and a high school social studies book *World History: Patterns of Interaction*.

"Handouts with each false excerpt should be given to every student," the e-mail reads. "The teacher should provide an accurate explanation." Although the letter claimed to be spurred by a grass-roots effort and not organized by Tea Party groups, its text is a form letter circulated by Patriots United founder Sheri Krass.

School Board members said they were shocked when they opened the e-mail, which includes a statement that organizers "reserve the right to remove those elected officials of the School Board in Districts who choose not to honor their requests."

School Board Chairwoman Barbara Sharpe said she doesn't respond to threats.

There's a method to selecting textbooks, board member Gunnar Paulson said. "I was a union president," he said. "There's a lot of things I'd like to see about labor put in the textbooks, but there's a process to follow."

Martha Winegar, instructional materials supervisor for the district, said the district gets a list of approved books from the state textbook committee. From there, a local teachers committee uses the book and its supplementary materials and decides which to adopt. "We select the best book for our district to meet the needs of our students," Winegar said.

Winegar said she was surprised when she learned of the complaint, the first made by an organized group to the district in five years. "I can't think that I've ever had a complaint personally," she said. "Parents will complain and think the books are too hard, but never a complaint about subject area."

The coming debate is part of the cyclical nature of textbook disputes, said Elizabeth Washington, a University of Florida social studies education professor. "There's always been some outcry about what's in textbooks," she said.

During the 1930s, for example, books were decried as too liberal. During McCarthyism, too Communist, Washington said. "It's not the Communists that we're afraid of anymore," she said. "It's the Muslim terrorists."

The state will adopt new social studies textbooks this year. "The timing seems right for people to get worked up about this," Washington said.

Ried, who serves as social studies chair for Gainesville High, said the accusations are ill-informed. "Every single textbook presents Christianity in a very positive way," she said, and treats the religion as a point of comparison for other religions. Reported in: *Gainesville Sun*, March 6.

Bedford, New Hampshire

Several anti-censorship groups are speaking out against a proposed checklist that Bedford school officials plan to use to rate books and other instructional materials. On March 11, the Kids' Right to Read Project—a collaboration between the American Booksellers for Free Expression and the National Coalition Against Censorship—sent a letter opposing the checklist to Bedford administrators. The letter was also signed by officials from the Association of American Publishers, the National Council of Teachers of English and the PEN American Center.

Bedford Superintendent Tim Mayes announced the proposed checklist in February, following one family's controversial—and successful—push to remove two books from the Bedford High School curriculum.

The first book, *Nickel and Dimed: On (Not) Getting By in America*, by Barbara Ehrenreich, was challenged by two parents—Dennis and Aimee Taylor—who took offense to the book's purported anti-capitalist and anti-Christian content. A panel of teachers and administrators eventually removed the book from the school's required Personal Finance course (see *Newsletter*, March 2011, p. 49).

Teachers removed a second book, *Water for Elephants*, by Sara Gruen, from a spring break elective course after the Taylors complained about the novel's sexual content. Teachers reportedly pulled the book because they did not want to deal with the sort of personal attacks they received during the *Nickel and Dimed* controversy.

Water for Elephants was scheduled to be used in one of the high school's intersession programs – three-day experiences in April geared to give students a valuable opportunity beyond the classroom – but Bedford High School Principal Bill Hagen said the decision was made to remove that course as an option.

The Taylors sent complaints to Hagen and Superintendent Tim Mayes about the book and denounced the text at the Bedford School Board meeting February 14. Dennis Taylor said he read *Water for Elephants* in its entirety after his youngest son, Ethan, signed up for the intersession course. His oldest son, Jordan, was pulled out of school following the controversy about *Nickel and Dimed*.

Taylor said he was appalled by the "graphic descriptions" of oral sex and masturbation in *Water for Elephants*, which is a historical novel about an old man

remembering his time as a circus veterinarian during the Great Depression.

"This book is likely to be a rated-X book, and thus, is totally unsuitable for use by the school," Taylor said in an e-mail. "I advocate that all persons responsible for the chain of events that lead (sic) to this book being used be fired or terminated from the School Board."

Taylor further suggested that the school only allow "youth versions" of particular books or organize a parental review system over the summer that would look at books that students need parental permission to read.

"I intend to fight every similar book that crosses my path," Taylor said. "We need to change the false notion that a bit of garbage in a book may be overlooked if the rest of the book is fine."

Hagen said since the book was only to be used in the three-day intersession curriculum, it was quickly pulled out of the program list to avoid the kind of national attention and offensive comments that came with the *Nickel and Dimed* controversy.

"The teachers were unwilling to be the brunt of the kinds of comments that were made in the last round of review," Hagen said.

Hagen said he personally received 50 to 100 comments from "all over the country" and some within the Bedford community about *Nickel and Dimed*, and the majority were "not at the level of respect" he would have hoped for civil dialogue.

In its letter to Bedford administrators, the Kids' Right to Read Project warned that the removal of both books from the curriculum would have a snowballing effect.

"The practical effect of acceding to any parent's request to censor materials will be to invite more book challenges, and to leave school officials vulnerable to multiple, possibly conflicting demands," the group writes. The letter also suggested that the new checklist was proposed with an eye to preventing future complaints, rather than improving the quality of the school's curriculum.

"While we applaud the efforts by school officials to create a system for curricular selections, we suggest that this response is both misguided and insufficient, because it is being driven in whole or in part by a desire to prevent parental complaints in the future," the group wrote.

McGee said that several facts stated in the letter are inaccurate, particularly the assertion that the school district removed *Nickel and Dimed* because of anti-Christian content. In reality, McGee said, the book was pulled for educational, rather than political, reasons.

"The instructional review committee found that the book is appropriate for use at the high school level. Internally, we did a review in terms of fit with the course of Personal Finance," McGee said. "For me, that's a pretty significant difference."

Joan Bertin, executive director of the National Coalition Against Censorship, warned that school districts across the country have unsuccessfully tried their own book checklists. Bertin was one of four free speech advocates who signed the letter to McGee and other school officials.

"The last checklist we saw had one category which was 'Won't cause unnecessary controversy,'" Bertin said. "Well, that is exactly the wrong kind of thing to put on the checklist. Once you put that on the checklist, you're going to have a lot of unnecessary controversy." According to a memo written by Mayes, Bedford's checklist will assign books and other materials a score based on several factors, possibly including violence, drugs, alcohol, profanity and sexuality. That score will be used to determine whether parental consent should be required for certain assignments.

The checklist will take six to nine months to put into use, and will be created with feedback from students, parents, faculty and Bedford residents.

"We're affirming that the material is pedagogically justifiable," McGee said of the checklist. "Really what we're doing is just affirming the decisions that our professional staff have made."

"I think we should have better guidance, and we're looking to do a better job, but we also hope to get a sense of the general community's opinion on this," Principal Hagen said. "That includes the opinions that are being expressed now but in a respectful way where we can get a broad range of opinion so we have an understanding of how we should proceed." Reported in: *Nashua Telegraph*, February 17; *Manchester Union-Leader*, March 15.

Clarkstown, New York

A controversial teen coming-of-age novel is upsetting some Rockland County parents who want it out of the Clarkstown North High School. Parent Aldo DeVivo's daughter, a junior, was assigned *The Perks of Being a Wallflower*, by Stephen Chbosky, which deals graphically with teenage sex, homosexuality and bestiality, in her English class. His wife, Patti, wrote down 40 pages of the slender book she found offensive.

"Why does the classroom really have to put a book with this kind of material in their hands?" Patti DeVivo wondered.

"As a Christian, do we really need to take the Lord's name in vain like that?" Aldo DeVivo added.

Other parents said they are also concerned.

"The words in there are so disgusting. The 'f' word. Private organ parts. Sounds pornographic—not for an English class. His daughter, my daughter is 16. It's disgusting," said Lorenzo Fortunato.

At Clarkstown North, the district superintendent issued a written statement, saying the goal of the curriculum is to have students "become informed and well-rounded members of a global society. Curriculum thus includes, on occasion, literature selections and discussions which may appear controversial."

One Clarkstown North senior said the book is new this year. "They're in high school. They know about it. They

should be reading about stuff that happens in real life," Chris Namme said.

So while the DeVivo's daughter was allowed to substitute Hemingway's *The Old Man and the Sea* instead, her parents are hoping others will join them in a possible lawsuit to ban *The Perks of Being a Wallflower* permanently from the Clarkstown North curriculum. Reported in: WCBS News, February 9.

college

Philadelphia, Pennsylvania

Chestnut Hill College, a Roman Catholic institution in Philadelphia, told a gay priest who had been a popular adjunct there for several semesters that he was no longer welcome to teach the two religion courses he had been offered for the term starting in February.

The college acted shortly after a Philadelphia man sent a letter to the archdiocese complaining that Chestnut Hill was employing Rev. James St. George, the gay priest. Father St. George actually has no problem reconciling his sexuality (and a long-term partner) with his faith, as he is part of the Old Catholic Apostolic Church of the Americas, which split from the Roman Catholic Church in the 1870s over a number of issues. Today it practices many Catholic rituals and shares some Catholic theology, but also permits priests to be married or gay.

After several days of discussion of the case in area publications, Sister Carol Jean Vale, president of the college, issued a statement in which she objected to reports that Father St. George had been fired, saying instead that she was trying to "clarify the conditions of our college's decision not to issue a new part-time teaching contract to Jim St. George."

The statement said that when he was first hired, "he presented himself as Father St. George and openly wore a traditional Catholic priest's collar." The college now knows, the statement continued, that he is the pastor of a church that "allows priests the option to engage in same-sex partnerships. This is contrary to the teaching of the Roman Catholic Church."

The statement went on to say that "[i]t was with great disappointment when we learned through St. George's public statements of his involvement in a gay relationship with another man for the past 15 years.... While we welcome diversity, it is expected that all members of our college community, regardless of their personal beliefs, respect and uphold our Roman Catholic mission, character and values both in the classroom and in public statements that identify them with our school."

Father St. George disputed several parts of the statement. First, he noted that just prior to being relieved of the courses, the college had sent him a contract that he was to turn in—and scheduled him to teach two classes. So he said he was fired.

Further, Father St. George said that he was open with Chestnut Hill officials that while he is a priest, he is not a Roman Catholic priest—and that he asked if that was an issue when he was hired. He said he was reassured by college officials, and told that many faculty members at the college are not Roman Catholic. Further, he said that anyone who did a Google search on him would have found that the church where he is a pastor is an "Old Catholic" church.

He noted that even though the college knew he was the pastor at St. Miriam Church, and even though the Roman Catholic archdiocese in Philadelphia last year informed all Catholic institutions in the area that St. Miriam is not part of the Roman Catholic Church, no one ever raised any concerns. His church's website has numerous references to "Catholic," but also many to "Old Catholic" and lots of clues that suggest the church doesn't follow Roman Catholic teachings on sexual orientation and the priesthood. For example, there is a link to Father St. George's interview about being a gay priest with *The Philadelphia Gay News*.

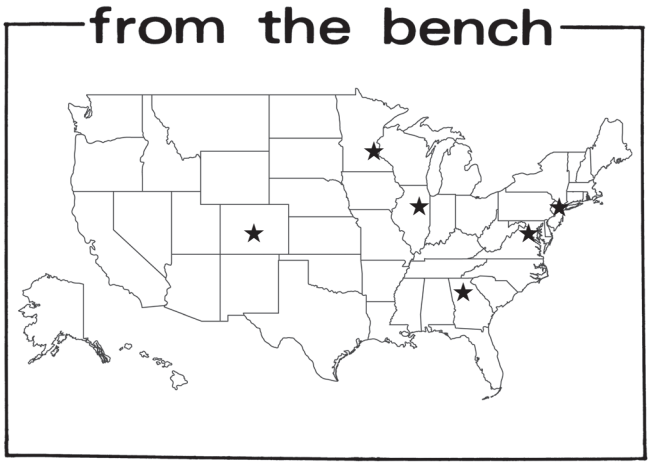
Local news accounts stressed how open Father St. George was about his sexual orientation (even if he and the college agree that he never talked about it in class), raising questions about how the college could claim to have been surprised to find out he is a gay priest in a parish that is not Roman Catholic. A college spokeswoman declined to answer those questions, or how the college could say Father St. George hadn't been fired when he was previously offered contracts for the semester. She said that the president's statement would be the college's "only participation" with this article.

A columnist for *The Philadelphia Daily News* reported that Father St. George's student evaluations were better than those of any other of the 56 adjuncts in his department. Among the student comments on the evaluations: "Your global justice class has changed my life," "I thank God for this course," and "I would trade any class I have just to be in another one of your classes."

Father St. George said that the college was being unfair in implying that he had fooled its officials into letting him teach there—when he was open about his non-Roman Catholic status. He also said that he saw many others of a variety of faiths who teach at the college and who do not follow church teachings. "The college has divorced people teaching. The college has people using contraception teaching," he said. "This is the 21st century so of course it does, but I'm being singled out."

He said he was particularly upset that the college president would admit in the Chestnut Hill statement that part of what made him unacceptable to the college was that he had a long-term relationship with another gay man. "I'm very sad," he said. "I'm sad that they would display such hatred and obvious bias, and I'm

(continued on page 119)



U.S. Supreme Court

The First Amendment protects hateful protests at military funerals, the Supreme Court ruled March 2 in an 8-to-1 decision.

"Speech is powerful," Chief Justice John G. Roberts Jr. wrote for the majority. "It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—inflict great pain."

But under the First Amendment, he went on, "we cannot react to that pain by punishing the speaker." Instead, the national commitment to free speech, he said, requires protection of "even hurtful speech on public issues to ensure that we do not stifle public debate."

The decision, from which Justice Samuel A. Alito Jr. dissented, was the latest in a series of muscular First Amendment rulings from the Roberts court. Last year, the court struck down laws limiting speech about politics and making it a crime to distribute depictions of cruelty to animals.

In the current term's other major First Amendment case, the court seems likely, based on the justices' questioning, to strike down a law banning the sale of violent video games to minors. Only the interest in national security has in the recent run of decisions been ruled substantial enough to overcome free-speech interests.

Chief Justice Roberts used sweeping language culled from the First Amendment canon in setting out the central place free speech plays in the constitutional structure. "Debate on public issues should be robust, uninhibited and wide-open," he wrote, because "speech on public issues occupies the highest rung of the hierarchy of First Amendment values."

The case arose from a protest at the funeral of a Marine who had died in Iraq, Lance Cpl. Matthew A. Snyder. As they had at hundreds of other funerals, members of the Westboro Baptist Church of Topeka, Kansas, appeared with signs bearing messages like "America is Doomed" and "God Hates Fags." The church contends that God is punishing the United States for its tolerance of homosexuality.

The father of the fallen Marine, Albert Snyder, sued the protesters for, among other things, the intentional infliction of emotional distress, and won a substantial jury award that was later overturned by an appeals court.

Chief Justice Roberts wrote that two primary factors required a ruling in favor of the church. First, he said, its speech was on matters of public concern. While the messages on the signs carried by its members "may fall short of refined social or political commentary," he wrote, "the issues they highlight—the political and moral conduct of the United States and its citizens, the fate of our nation, homosexuality in the military and scandals involving the Catholic clergy—are matters of public import."

Second, the members of the church "had the right to be where they were." They were picketing on a public street 1,000 feet from the site of the funeral; they complied with the law and with instructions from the police, and they protested quietly and without violence. Any distress occasioned by Westboro's picketing "turned on the content and viewpoint of the message conveyed," Chief Justice Roberts wrote, "rather than any interference with the funeral itself."

All of that means, the chief justice wrote, that the protesters' speech "cannot be restricted simply because it is upsetting or arouses contempt."

Chief Justice Roberts suggested that a proper response to hurtful protests is general laws creating buffer zones around funerals and the like, rather than empowering juries to punish unpopular speech. Maryland, where the protest took place, now has such a law, as do, the chief justice said, 43 other states and the federal government.

In his dissent, Justice Alito said such laws offer insufficient protection. "The verbal attacks that severely wounded petitioner in this case," he wrote, "complied with the new Maryland law regulating funeral picketing."

The majority opinion acknowledged that "Westboro's choice added to Mr. Snyder's already incalculable grief" and emphasized that the ruling was narrow and limited to the kinds of protests staged by the church. But the language of the opinion was sweeping.

"Westboro's funeral picketing is certainly hurtful and its contribution to public discourse may be negligible," Chief Justice Roberts concluded. "But Westboro addressed matters of public import on public property, in a peaceful manner, in full compliance with the guidance of local officials."

Justice Stephen G. Breyer joined the majority opinion but wrote separately to say that other sorts of speech, including television broadcasts and Internet postings, might warrant different treatment.

The case initially did concern not only public protests but also an Internet posting created by the church group that denounced the Snyders by name. But Chief Justice Roberts said the Snyders had failed to pursue their arguments concerning the posting in the Supreme Court and so it "does not factor in our analysis."

The Reporters Committee for Freedom of the Press and 21 news organizations filed a brief supporting the church. "To silence a fringe messenger because of the distastefulness of the message," the brief said, "is antithetical to the First Amendment's most basic precepts."

In his dissent, Justice Alito likened the protest to fighting words, which are not protected by the First Amendment. "Our profound national commitment to free and open debate," Justice Alito wrote, "is not a license for the vicious verbal assault that occurred in this case."

Justice Alito was also the lone dissenter in *United States* v. *Stevens*, last year's decision striking down a ban on videos and other depictions of animal cruelty.

In *Snyder* v. *Phelps*, Justice Alito wrote that the Westboro church may speak out in many ways in many places and should not be allowed to capitalize on the private grief of others. "In order to have a society in which public issues can be openly and vigorously debated," he wrote, "it is not necessary to allow the brutalization of innocent victims."

Neither Chief Justice John Roberts' majority opinion in the case nor Justice Samuel Alito's angry lone dissent, added much to existing First Amendment doctrine or precedent. What made both opinions interesting, however, is what they leave out. Roberts' majority opinion focused on the fact that the Phelps' speech is a matter itself of "public concern," while Alito's dissent contended that it was targeted solely at the Snyder family. Both sides make unspoken assumptions about whether funerals are private places, however; assumptions that suggest a lot about their changing and rather personal views of the difference between public and private spaces in America.

Roberts simply asserted that the funeral protest occurred "at a public place" and that "the church members had the right to be where they were." Alito, for his part, assumed that the military funeral of a private citizen is a private space. As he put it in his dissent, "They could have selected any public road where pedestrians are allowed.… They could have chosen any Catholic church where no funeral was taking place." Alito continued, "There is no reason why a public street in close proximity to the scene of a funeral should be regarded as a free-fire zone."

Roberts, in other words, focused on the fact that the protesters complied with all the time, place, and manner regulations; confined their activities to a public street; and neither entered the church nor disrupted the funeral. Alito emphasized that the protesters selected a space as close as possible to the intimate space in which a parent has a right "to bury his son in peace," and then crafted the event to inflict maximum harm with maximum publicity.

The court deliberately sidestepped the question of whether the media plays any kind of role in converting private spaces into public ones. Thus, the court deliberately carved out of the case one of most interesting and important questions it had raised: Has the media left any truly private spaces in America? The court did not address the television coverage of the protest or the nasty "epic" posted by the church on the Internet, which attacked the Snyder family in personal terms. As the majority declared, in setting these novel issues aside, "Internet postings may raise distinct issues in this context."

This was the question Justice Stephen Breyer most wanted to address, both at oral argument and in his concurring opinion. He is open to the possibility that television and the Internet have the ability to amplify private speech until it inflames. A private act can transform the entire world into a crowded theater, in his view, and he suspects that the First Amendment might not protect Quran burning or other acts that might drive listeners to violence.

In Breyer's view—and it's clear from his dissent that Alito agrees—the Internet has created the possibility of a kind of First Amendment butterfly effect, wherein a Quran burning in a Florida parking lot can launch a revolution half a world away. They suspect that the line between public and private speech has been blurred, if not obliterated, by new technologies and they are each frustrated that the court still pretends otherwise in its First Amendment cases. Reported in: *New York Times*, March 2; slate.com, March 8.

The Supreme Court on March 7 rejected an appeal by the University of Wisconsin at Madison of a federal appeals court ruling that could require many public colleges and universities to permit the use of student fee money to pay for explicitly religious activities, including those involving prayer.

A coalition of higher education groups backed Madison in the case and urged the Supreme Court to take the case, arguing without success that the lower court's decision intruded on reasonable university rules designed to protect the separation of church and state. By rejecting the appeal, the Supreme Court did not endorse the lower court's ruling, but ensured that it remains in effect in the states covered by the U.S. Court of Appeals for the Seventh Circuit—Illinois, Indiana and Wisconsin.

A 2-to-1 ruling by the appeals court in that circuit last year took away the right of Wisconsin, and potentially other public colleges and universities, to support some student activities while denying funds to organizations for worship services, proselytizing, or other activities that explicitly involve the practice of religion. Wisconsin's rules permitted the funding of many activities organized and run by religious student groups. But the rules barred activities related to prayer or proselytizing. Among the activities that Wisconsin told a Roman Catholic group could not be financed (leading to the litigation) were summer training camps with Roman Catholic Masses, a program to bring

nuns to campus to help students determine if they have the calling to be priests, and the distribution of Rosary booklets.

The majority opinion from the appeals court said that once a state university supports student activities that involve leadership development or counseling, it can't exclude some activities simply because they are religious in nature. Wisconsin's appeal, with backing from the American Council on Education and other higher education groups, said that public universities make distinctions all the time, based on legitimate educational needs, and that the appeals court endangered the independence of such determinations. Many public colleges and universities have policies on student fees that are similar to those at Madison.

In theory, a state university that didn't want to provide student fee funds to support activities related to prayer could scale back or eliminate its student activities, but that is unlikely. Most state universities have large and complicated systems for funding student groups—and depend on these groups to provide events and clubs for students.

A recent dispute at Indiana University at Bloomington illustrates the way public universities in the Seventh Circuit may have to change their policies. The Alliance Defense Fund—the legal group that helped the Catholic student group at Madison—complained to Indiana about student activities rules that barred support for religious groups that engaged in proselytizing or sectarian activities. The complaint focused on the rejection by Indiana of a request by a Christian group for support to send members to a national conference, where Indiana had determined the programming would violate university rules for receiving student fees.

In a December letter to Indiana, the Alliance Defense Fund cited the appeals court ruling on Madison to demand that Indiana change its standards—and in February the university amended its rules, removing the limits on religious activities eligible for student fees.

The Alliance Defense Fund praised the decision of the Supreme Court not to intervene in the Wisconsin case. "The constitutional rights of Christian student organizations should be recognized by university officials just as they recognize those rights for other student groups," said Jordan Lorence, senior counsel.

Ada Meloy, general counsel for the American Council on Education, said she was "disappointed" that the Supreme Court declined to consider an appeal. She said she continues to believe that the appeals court decision was incorrect, even if it is "now the law of the land" in the Seventh Circuit. Meloy said that public colleges and universities in that region would probably come up with a range of ways to comply with the ruling. She added that the ruling "is not binding in areas other than the Seventh Circuit." Reported in: insidehighered.com, March 8.

Does Congress have the right to restore copyright protection to foreign works that have fallen into the public domain?

That issue is at the heart of a major copyright case that the Supreme Court agreed to hear March 7. Its resolution could have implications for libraries' ability to share works online, advocates say.

In dispute are decades-old foreign works that slipped into the public domain in the United States while still copyrighted abroad. Congress in 1994 adopted a bill to place those works back under the shield of copyright protection, in an effort to align U.S. policy with an international copyright treaty called the Berne Convention. The aim of that convention was to ensure that works copyrighted in one country get comparable protection elsewhere, "since there is no such thing as international copyright," according to SCOTUSblog, which tracks the Supreme Court.

But the Internet Archive argues that the American law poses "a significant threat to the ability of libraries and archives to promote access to knowledge," according to a brief filed on its behalf by the Electronic Frontier Foundation, a group that advocates for civil liberties online.

The problem is that the law has "drastically eroded" libraries' ability to know what works can be distributed, the brief argues. For example, the Internet Archive currently shares books by Maxim Gorky, music by Prokofiev, and audio recordings of work by the writer Alexander Solzhenitsyn. The law creates "fundamental questions" about whether these works remain in the public domain, according to the brief.

And that ambiguity could have a "chilling effect" on libraries worried that they could be sued for copyright violations, says Julie Samuels, a staff attorney at the Electronic Frontier Foundation. "A library might not provide access to certain works if they're unsure if that work will remain in the public domain," she said.

It's unclear how many works could be affected; Samuels says the number "could be into the millions."

The case, *Golan* v. *Holder*, was pressed by conductors, performers, educators, and others who say they depend on public domain works for their livelihoods. A federal-appeals panel ruled against the group in July. The Supreme Court is expected to make a decision on the case during the new term that starts in October. Reported in: *Chronicle of Higher Education* online, March 8.

colleges and universities

Colorado Springs, Colorado

A federal judge has rejected an attempt by five professors and a watchdog group to stop a prayer luncheon at the U.S. Air Force Academy. Judge Christine Arguello of the U.S. District Court in Denver ruled February 9 that the plaintiffs did not have legal standing to challenge the event. The luncheon is sponsored by the academy's chaplain service, but academy commanders had also promoted it. R. David Mullin, an associate professor of economics,

and the other faculty plaintiffs had argued that the official promotion of the event violated the First Amendment's establishment clause, and that they feared retaliation if they did not attend.

But Judge Arguello said that a speculative fear of retaliation does not constitute actual harm. Mullin said afterward that he hoped the ruling would make academy officials more careful about how they promoted religious events. Reported in: *Chronicle of Higher Education* online, February 9.

Atlanta, Georgia

Buried beneath the news of the Google Settlement's rejection last week, a federal judge in Georgia has paved the way for publishers to go to trial in a contentious copyright case involving e-reserve practices at Georgia State University. On March 17, Judge Orinda Evans denied a University motion to dismiss the final count in the suit, setting May 16 as a trial date. The order came after Evans denied all three of the publishers' motions for summary judgment, while granting two of three University motions to dismiss, in October, 2010. She allowed the action to proceed on a single, more narrowly drawn charge of contributory infringement.

In the latest ruling, attorneys for the defendants had argued that the final count should be dismissed because of "state sovereign immunity," which generally limits state entities from being sued in federal courts. Publishers, however, are suing four individuals at Georgia State in an attempt to get around state immunity. Evans held that dismissal at this juncture would be "improper" because "based on the pleadings alone, the court cannot say that it lacks subject matter jurisdiction to hear the case." Evans suggested, however, that state sovereign immunity could still factor in to a decision, ruling that the parties will need to present evidence at trial "that will allow the court to rule on the question."

The case, known as *Cambridge University Press, et al* v. *Patton et al*, was filed in 2008, alleging that as of February 19, 2008, Georgia State's e-reserve system was far too liberal, making over 6,700 total works available for some 600-plus courses, and "inviting students to download, view, and print such materials without permission of the copyright holder." In June of 2009, however, the court granted a protective order to the defendants, limiting the case to practices after February 17, 2009, when a new copyright policy at was adopted, a ruling that seriously undercut the publishers' case. Surprisingly, however, the parties have not settled, and observers say that publishers now face a very high bar in order to prevail on the last count of contributory infringement.

Specifically, publishers must show that the implementation of Georgia State's 2009 Copyright Policy "resulted in ongoing and continuous misuse of the fair use defense," Evans' notes. "To do so, Plaintiffs must put forth evidence of a sufficient number of instances of infringement of Plaintiffs' copyrights to show such ongoing and continuous misuse."

A blog post on the Association of Research Libraries' web site elaborates on what that means in practice: "Publishers... will now have to get down in the weeds and show infringement in enough particular cases to show that the Georgia State policy going forward will cause continuous and ongoing infringement." Attorneys for the GSU defendants, the post notes, would then have to "establish fair use in enough cases to prevent the University from crossing the 'ongoing and continuous' threshold."

While the high-profile, visionary Google settlement has captured the attention of the publishing industry at large, e-reserves is a popular, common practice that has long vexed publishers. The practice takes its name from the traditional library "reserve" model, where a professor might make a limited number of physical copies of articles or a book chapter available for students, generally subject to permission, and, in theory, with reproduction fees paid to publishers. In the digital world, however, educators can now scan or download chapters or articles, create a single copy, place it on a secure, password-protected server, and allow students to access the copy. Educators insist the practice is fair use, while publishers claim the practice is sapping revenue.

However it goes, the Georgia State case is now on track to deliver something the Google litigation did not: a decision that could impact the scope of fair use. Reported in: *Publisher's Weekly*, March 29.

Champaign-Urbana, Illinois

A federal judge has ruled that the Family Educational Rights and Privacy Act does not prohibit the University of Illinois from turning over the names and educational records of applicants. The law, known as FERPA, protects the privacy of student records, and colleges that violate it could lose their eligibility for federal student aid.

The Chicago Tribune had originally sought information about hundreds of applicants—including the names and addresses of their parents—as part of a series of stories examining political influence in the admissions process at the University of Illinois at Urbana-Champaign. The newspaper later asked for the names of applicants and their high-school grade-point averages and ACT scores. The university had denied some of the paper's requests, saying it was barred from releasing the data under FERPA.

Illinois open-records law exempts "information specifically prohibited from disclosure by federal or state law or rules and regulations adopted under federal or state law." FERPA, the university argued, makes such a prohibition.

The newspaper then sued in both state and federal court, with the federal suit concerning only the first request. And Judge Joan B. Gottschall, of the U.S. District Court in Chicago, ruled that FERPA does not bar

the university from releasing the records, according to court documents.

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."

The law stipulates that institutions receiving federal aid cannot release certain types of educational records, but in her ruling, Judge Gottschall said the university could choose not to accept such aid and is, therefore, not "prohibited" from releasing the records.

Because the ruling was narrow, looking only at the "prohibition" question, the decision does not necessarily mean the university will have to hand over the records to the *Tribune*—and potentially make itself ineligible for federal aid. The university has previously cited several additional exemptions in the state's open-records law, including one for "files and personal information" related to students at public educational institutions.

The state case is continuing, according to the *Tribune*. The university has not said whether it will appeal the federal ruling.

"The university's effort to offer transparency while protecting student-privacy rights is guided always by the spirit and letter of the law," it said in a written statement. "Although the court's ruling is narrow, it remains disappointing as it represents a setback for the privacy rights of young adults applying for admission to public universities in Illinois and nationwide. We will review the ruling thoroughly before deciding upon next steps."

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 (including Florida) 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 J. McDonald, an expert on FERPA and the general counsel at the Rhode Island School of Design, said a handful of other cases have looked narrowly at the question of whether FERPA "prohibits" public colleges from releasing records. Some courts have arrived at conclusions similar to Judge Gottschall's, he said. But others have held that as a practical matter a college could not reject federal funds and that, therefore, FERPA is tantamount to a prohibition on releasing educational records.

He did not know of any cases where a public college had ultimately handed over student records that forced it to forgo federal funds. "It would shut a college down," he said. Reported in: *Chronicle of Higher Education* online, March 9; insidehighered.com, March 10.

Minneapolis, Minnesota

A federal judge on March 30 rejected a lawsuit against the University of Minnesota over the website of one of its centers—and the right of that center to deem another website "unreliable."

At one level the suit focused on history and the dispute over why so many Armenians were killed during World War I. But more broadly, the case involved two competing claims of academic freedom.

The website of Minnesota's Center for Holocaust and Genocide Studies makes clear that its faculty members believe (consistent with the consensus view of historians) that what happened to the Armenians was a genocide. Many Turkish groups disagree, and the suit was sparked by the university's labeling of the information on the Turkish Coalition of America's website as "unreliable." The group sued, arguing that the label amounted to an unfair endorsement by the university of a specific position—and that doing so discouraged students and faculty members from asserting other points of view, in violation of the principles of academic freedom.

Judge Donovan W. Frank found that academic freedom issues were indeed central to the case—but he sided with the University of Minnesota, which argued that its faculty members had the right to express their views on the genocide center's website—including views criticizing websites that argue against the certainty of an Armenian genocide.

"The court concludes that this case is properly viewed in the context of academic freedom and that defendants' statements are protected by that freedom," Judge Frank wrote. "The CHGS [the genocide studies center] is free to indicate to students that it thinks certain websites are not proper sources for scholarly research. The ability of the university and its faculty to determine the reliability of sources available to students to use in their research falls squarely within the university's freedom to determine how particular coursework shall be taught. The CHGS also acknowledges their viewpoint that the killing of Ottoman Armenians during World War I was genocide. This viewpoint, as well, is within the purview of the university's academic freedom to comment on and critique academic views held and expressed by others."

Mark B. Rotenberg, general counsel for Minnesota, said that the ruling was unusual in that it was decided strictly on the issue of academic freedom. Many federal court rulings, he noted, refer to academic freedom but are based in the end on the First Amendment, due process or other legal rights.

"We see this as a highly significant federal decision involving academic freedom, since there are so few cases that are decided squarely on the principle of academic freedom," he said.

Rotenberg said that, had the Turkish Coalition of America been successful, the ramifications could have extended well beyond Minnesota or scholars of the Armenian genocide. Any time that faculty members or a research center shared views that others might contest, a university could have been at risk of being sued, he said. Instead, a federal judge has affirmed that "faculties don't have to be completely neutral in expressing their views of others' scholarly writing, and that they can have a perspective that advocates one academic perspective over another. ... This is a very important vindication for academic freedom."

Bruce Fein, one of the lawyers for the Turkish Coalition of America, said that the group was still studying the decision and had not decided whether to appeal. Fein said that the judge "did not address the substance of our arguments" and seemed to accept the University of Minnesota's claims about its views of academic freedom. Fein said that, in his view, "academic freedom was a pretense in trying to indoctrinate rather than educate." He said that, in the name of academic freedom, the university was trying "to impose an orthodoxy."

The university and its defenders have responded by saying that Minnesota has never banned anyone from doing research or expressing ideas such as those of the Turkish Coalition with regard to what happened to the Armenians. But that does not mean, Minnesota has argued, that its faculty members and research centers can't express a view on the issue.

Several scholarly associations—the International Association of Genocide Scholars, the Middle East Studies Association and the Society for Armenian Studies—opposed the suit.

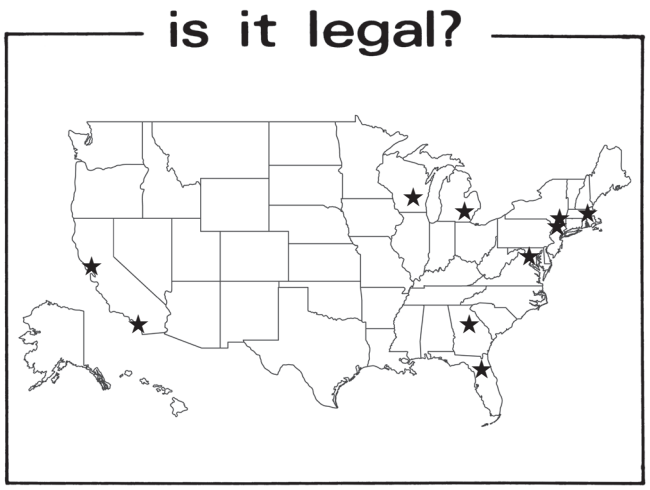
In a public letter to the coalition, the Middle East studies group said: "Your organization, and those who hold perspectives different from those expressed by scholars associated with the Center, certainly have the right to participate in open scholarly exchange on the history of the Armenians in the late Ottoman Empire or any other issue, by presenting their views at academic conferences, in the pages of peer-reviewed scholarly journals or by other means, thereby opening them up to debate and challenge. We are distressed that you instead chose to take legal action against the University of Minnesota and its Center for Holocaust and Genocide Studies, apparently for having at one point characterized views expressed on your website in a certain way. We fear that legal action of this kind may have a chilling effect on the ability of scholars and academic institutions to carry out their work freely and to have their work assessed on its merits, in conformity with standards and procedures long established in the world of scholarship. Your lawsuit may thus serve to stifle the free expression of ideas among scholars and academic institutions regarding the history of Armenians in the later Ottoman Empire, and thereby undermine the principles of academic freedom." Reported in: insidehighered.com, March 31.

libel

New York, New York

A French court has dismissed a criminal-libel charge brought against a journal editor over a negative book review and ordered the plaintiff to pay punitive damages.

(continued on page 120)



libraries

Worcester, Massachusetts

The library is a marketplace of ideas, but sometimes they mix like oil and water. On February 23, for instance, scheduled events at the Worcester Public Library were to include Black Culture Movie Night—and the monthly meeting of North East White Power.

When the white power group scheduled its meeting, it did so under its acronym, NEWP. It wasn't until third parties recognized the acronym and e-mailed the library that Head Librarian Mark J. Contois realized he might have a volatile situation. He conferred with the city manager's office and the Police Department, who recommended asking one of the groups to reschedule. The Black Culture Movie Night—which planned to view the movie "Souls of Black Girls"—had been scheduled first, so Contois asked the white power group to postpone its meeting.

Russell A. James of New Hampshire, who is a representative of the white power group, said the group had not set a date yet and is skeptical the library will let them meet there. "What we're going to find, of course, is that they're going to have another excuse," he said.

Contois, however, said that is simply not true. The Worcester Public Library adheres to the American Library Association's *Library Bill of Rights*, which states that meeting rooms should be available to the public "regardless of the beliefs or affiliations of individuals or groups requesting their use."

"I don't believe you counter intolerance with intolerance," Contois said. "I'm proud to be part of a profession that has such high ideals about the free exchange of ideas in a democratic society."

North East White Power has been meeting at the library since November, and typically draws between five and 25 people, James said. Some of those who attend are libertarians, and others "who probably call themselves Nazis" are in allegiance to national socialism, he said.

Parlee L. Jones-Thompson, who organized the Black Culture Movie Night with her Worcester-based agency, Our Story Edutainment, said she was relieved to hear the white power group had rescheduled, but noted that NEWP will come back. "There's a reason they're coming to Worcester," she said. "It's just something that we have to be aware of."

One People's Project, a Philadelphia-based website that monitors white supremacist groups and individuals, posted the planned white power meeting on its website and alerted the library and others what NEWP stood for. (Contois said he received e-mails from others besides One People's Project about the issue.) Daryle Lamont Jenkins, spokesman and founder of One People's Project, said it was the first time he had seen the group meet at a library.

"I think they fly under the radar," he said. His group spreads information about such organizations to "try to diminish their ability to function," he said.

James had other words for One People's Project. He said his own group would not have been a security issue at the library. "We would never, ever have problems" with blacks, he said. "It's Jews, homosexuals and radical feminists who are causing the problems."

The white power group's website had included a link to a video of Oxford resident and strip club manager Easton Byfield, who is black, confronting a white patron at the Platinum Premier strip club in Worcester. Byfield was charged last week with assault in the encounter.

Jones-Thompson, who organized the Black Culture Movie Night, said she had gotten calls of support from people before the white power meeting was postponed. She said she did not know if there would have been a protest outside the white power meeting. Reported in: *Worcester Telegram*, February 22.

schools

New York, New York

The American Civil Liberties Union, the ACLU of Michigan and the ACLU of Kansas and Western Missouri sent letters to public high schools March 28 demanding that the schools stop viewpoint-based censorship of web content geared toward the lesbian, gay, bisexual and transgender (LGBT) communities. The ACLU was notified that the schools were censoring material after teaming with Yale Law School to launch the "Don't Filter Me" campaign, which asked students to check to see if their school was blocking content.

Don't Filter Me asks high school students to visit a variety of GLBT-related sites from school computers, including the sites for the National Day Of Silence, the It Gets Better campaign, the Gay-Straight Alliance Network and the Gay, Lesbian and Straight Education Network. The ACLU is also asking students to visit sites that condemn homosexuality or advocate for LGBT people to try to change their sexuality such as People Can Change and the National Association for Research & Therapy of Homosexuality.

The ACLU asked students to report any censorship of these sites.

"Schools not only have a legal duty to allow students access to these sites, it is also imperative that LGBT youth who are experiencing discrimination and bullying to be able to access this information for their own safety," said Joshua Block, staff attorney with the ACLU LGBT Project

"We're pleased that students around the country are responding to the initiative by asserting their rights and letting their schools know that censorship is unacceptable," Block said. "Blocking these sites not only discriminates against LGBT viewpoints, but can deny LGBT students in crisis a much-needed lifeline for support."

Programs that block all LGBT content violate First Amendment rights to free speech, as well as the Equal Access Act, which requires equal access to school resources for all extracurricular clubs. This means that gay-straight alliances and LGBT support groups must have the same access to national organizational websites as other groups such as the Key Club and the chess club.

Some schools have also improperly configured their web filters to block news items pertaining to LGBT issues and deny access to support groups that could be vital for troubled LGBT youth who either don't have access to the Internet at home, or do not feel safe accessing such information on their home computers.

Students who have responded to the "Don't Filter Me" campaign include Nick Rinehart of Rochester High School in Rochester Hills, Michigan, and Molly Mendenhall, of Oak Park High School in Kansas City, Missouri. The ACLU is also sending requests for information about web filtering programs to school districts in Alabama, Arkansas, California, Nevada, New Jersey, Pennsylvania, South Carolina, Texas, Wisconsin, and Washington.

"I couldn't believe my school would block access to perfectly legitimate websites just because they were about LGBT issues," said Rinehart, who was blocked from looking up information on gay-straight alliances with a message that said his search violated Rochester High School's "acceptable use" policy. "It's not fair for the school to try to keep students in the dark about LGBT resources."

"This is legitimate information that we need to know about," said Mendenhall. "We need access to these sites to run our school clubs, to support each other and to understand current events. Schools shouldn't be putting limits on our education."

Some schools have improperly configured their web filters to block access to websites for LGBT rights organizations such as the Gay-Straight Alliance Network, the Gay, Lesbian and Straight Education Network, and websites pertaining to the National Day of Silence to protest anti-LGBT bullying. However, the filters sometimes allow access to sites that condemn homosexuality or urge LGBT people to try to change their sexual orientation, such as People Can Change.

The ACLU gave the schools until April 4 to respond.

The ACLU sued two school districts in Tennessee in 2009 for blocking access to LGBT-related Web sites, and the two parties quickly settled, with the district agreeing to stop blocking those sites. Block said addressing the filter problem is simple for school districts: They simply need to change the settings on their filtering software—which most districts elect to do once contacted by the ACLU.

A video showing students how to test whether or not their school is illegally filtering content, and providing instructions for reporting censorship, can be seen here: *www.aclu.org/lgbt-rights/dont-filter-me*.

Students who want to report unconstitutional web filtering at their schools can fill out a form at: *action.aclu.org/dontfilterme.*

More information on the ACLU's work on LGBT school issues can be found here: *www.aclu.org/safeschools*. Reported in: ACLU Press Release, March 28; *National Law Journal*, February 16.

colleges and universities

Irvine, California

A local district attorney charged eleven students February 4 for their alleged roles in organizing and orchestrating a protest last February in which an invited speaker at the University of California at Irvine, the Israeli ambassador to the United States, was repeatedly heckled and eventually shouted down. The Orange County district attorney accused the students—eight at Irvine and three at the university system's Riverside campus—of "a preplanned violation of the law."

In the aftermath of the speech, the university took the unusual step of suspending a campus group, the Muslim Students Union, for planning to disrupt the event. Members of the group denied that they had done so, but the district attorney said they had met several times in the days before the event and had exchanged e-mail to plan a deliberate obstruction of the ambassador's appearance. The 11 students were each charged with two misdemeanors and, if convicted, could face fines, probation with community service, and a six-month jail term.

In response, one hundred faculty members at the University sent a letter to the district attorney calling on him to drop the criminal charges. "The students were wrong

to prevent a speaker invited to the campus from speaking and being heard," the letter said. But the university punished both the students and the Muslim Student Union, which was suspended, and those campus penalties should be considered sufficient punishment. The faculty members also accused the district attorney of setting "a dangerous precedent for the use of the criminal law against nonviolent protests" on the campus. Reported in: *Chronicle of Higher Education* online, February 5, 9.

Pleasant Hill, California

A former assistant professor of psychology at John F. Kennedy University in Pleasant Hill, has sued the institution for sex discrimination, alleging that she was fired for performing in an off-campus burlesque act.

On its own, the federal complaint, filed by Sheila M. Addison in U.S. District Court for the Northern District of California, raises questions about sex, gender stereotypes and free speech for faculty members. In the context of a recent uproar at Northwestern University, where a professor of human sexuality arranged to have a live sex demonstration take place in his lecture hall after class, some say that Addison's case also raises concerns about double standards of sexually related conduct as they apply to men and women in academe.

Addison was hired in September 2007 to teach graduate students under a one-year contract as an assistant professor of psychology. The following July she was awarded a two-year contract, which stated that she could be fired only for just cause, according to the complaint. The contract also held that she would be deemed to have her contract extended unless it was formally canceled. It was not canceled as she never received negative performance evaluations, the complaint says.

At about the same time that she started working at JFK, she started performing under a pseudonym, Professor Shimmy, at the Hubba Hubba Revue, a burlesque show in San Francisco. Addison performed intermittently with the revue, which typically plays to about 400 to 600 people every month, said producer and co-founder Jim Sweeney. Hubba Hubba, like traditional burlesque, intertwines partial striptease (down to pasties and g-strings), dance and comedy with parody and references to popular culture.

Addison also belonged to a group of performers who sought to bring social commentary to their acts. Some of her performances tell stories, including one in which she performs with a classically trained male ballet dancer. He is dressed as a snow fairy and she as the abominable snowman. As they remove nearly all of their clothes, their gender identities are revealed to be the opposite of what they first seemed.

Addison's group incorporated social commentary in other ways as well. The body types of the performers—Sweeney said that a 74-year-old often performs with Hubba Hubba—play into the revue's ethos of challenging social norms. "There's not a distinction about the forms or the shapes of the people who do burlesque nowadays. You can be any age and any size," he said. "[Addison]'s absolutely someone who believes in those things and typifies those things."

But officials at JFK deemed her participation in the burlesque act to be inappropriate, the complaint says, though she never publicized it on campus, discussed it with students or identified her affiliation with JFK when she performed. A letter, dated June 21, informed her that she was fired, effective nine days later.

Her participation in the burlesque performances was the only reason cited in her termination letter, the complaint says. Steven Stargardter, president of the university, explained in the letter to her that her actions brought "public disrespect, contempt and ridicule to the university," the complaint says. Her contract as a Core Faculty Member specified that she could not participate in any activity that "may be adverse to the interests of the university."

But her firing, Addison alleges in her suit, "evidences the university's disgust for a woman performing in politically, socially and sexually based performance art." One basis for her claims of sex discrimination, as she alleges in the complaint, is that a male colleague in another department was performing at the same time in a one-man show in which he was partially nude. Though he publicized his show on campus and invited students and colleagues, he was not disciplined, the complaint alleges.

The university said it could not comment on the case beyond a blanket refutation of the claims because the matter is in litigation. "The university believes at this time that the allegations are without merit," said Theresa Rodgers, director of human resources at JFK.

According to letters from the administration that are cited in the complaint, Addison needed to be fired because a mere warning and change of behavior would not suffice. "The damage had already occurred," she was told. Administrators also cited concerns that word of her performances had spread among students, who had lost respect for her and were "shocked and dismayed."

Addison appealed to California's Department of Fair Employment and Housing and the Equal Employment Opportunity Commission, both of which issued right to sue notices; then she filed the federal lawsuit. In her suit, Addison seeks lost wages and damages and cites 15 causes of action, including breach of contract, unfair business practices, termination for political activity, sex discrimination, harassment for failure to conform to gender stereotype and tortious termination.

"From our perspective," said her lawyer, Greg Groeneveld, "this is about the right of college and graduate school faculty to engage in artistic and political activity on their own time."

Addison's case, while different in several respects, is also notable given the attention generated by a recent

controversy at Northwestern University. J. Michael Bailey, a professor in the department of psychology, held an optional presentation after his human sexuality class in which a naked woman was stimulated to orgasm with a sex toy. Northwestern's president, Morton Schapiro, said he was "troubled and disappointed by what occurred" and ordered an investigation, which is still under way. Bailey issued an apology and some of his students have defended him, but there have been—as of yet—no formal consequences.

The disparity between the two cases reflects a double standard in how men and women are treated, both in higher education and in the workplace more generally, said Lisa Maatz, director of public policy for the American Association of University Women. Though she said tenure also likely played a role—Bailey at Northwestern has tenure, Addison does not—Maatz wondered what would have happened if a woman had commissioned a sexual demonstration like he did. "Had this been a woman, this wouldn't have just been a scandal—it would have been written about in much more lurid ways."

As for Addison's situation, Maatz said it exemplified how narrow the margin for error is for women in academe. "The gray area for women is much smaller," she said. "'Good girls get rewards and rebels or people who speak truth to power aren't necessarily appreciated." At the same time, she acknowledged—while specifying that she was not necessarily referring to either case—that poor judgment spans genders. "Unfortunately," she added, "decision-making and consequences often do come from a gender lens." Reported in: insidehighered.com, March 14.

Washington, D.C.

The American Association of University Professors has joined the American Civil Liberties Union and the PEN American Center in issuing a statement questioning the U.S. State Department's decision to deny a visa to Malalai Joya, an Afghan politician and human-rights activist. The groups do not have any evidence that Joya, a critic of American policy, was denied a visa based on her views, and the U.S. Department of State has signaled that it is ending the controversial practice of "ideological exclusion." But even if the visa was denied for other reasons, the three groups want the State Department to grant Joya a denial waiver so she can undertake a planned three-week speaking tour of the United States. Reported in: *Chronicle of Higher Education* online, March 22.

Kennesaw, Georgia

"In the university, the higher up the hierarchical structure, the more one has decision-making power and the further one is from the actual 'work' (discovering and disseminating knowledge)."

Timothy J. L. Chandler, the co-author of a 1998 journal article with that quote about university hierarchies, is going to stay a step closer to actual work. On March 17, he announced that he is turning down the position of provost at Kennesaw State University—in part because of furor set off in the local area over the article, which applies class analysis and several times cites Marx.

"I have decided it is in the best interest of Kennesaw State University for me to withdraw at this time. I feel strongly about the commitment that I made to elevating Kennesaw State University's academic stature. However, I have now come to believe that the recent distractions caused by external forces would interfere with my effectiveness as provost," Chandler said in a statement released by Kennesaw State. Kent State University, where Chandler has worked for twenty years, most recently as senior associate provost, announced that he would stay on in that position and that "their loss is our gain."

Chandler's withdrawal came a week after he said he was not going to be deterred by the local controversy, and after Kennesaw State's president issued a statement defending the hiring. Chandler said at the time that he was "not inclined to withdraw from the provost position under the cloud of a Red scare."

Kennesaw State's announcement said that the president, Daniel S. Papp, "emphasized that Dr. Chandler's decision to remain at Kent State was strictly his own and is not related to any viewpoints that Dr. Chandler has expressed in previous academic work." Papp had been quoted in the local press as saying he was surprised by Chandler's journal article.

Chandler said that the experience of being appointed at Kennesaw State and then feeling it was necessary to withdraw left him with renewed appreciation of the role of academic freedom, and some concerns about whether academics have done a good enough job of explaining the nature of scholarly writing to the public.

The news that someone withdrew as provost designee because of a long-ago journal article prompted some Georgia professors to say that academic freedom has taken a beating—and disturbed some experts on administrative searches. A search consultant who asked not to be identified because of the industry norm of not speaking about specific searches said that he had never had a pick for a senior position feel pressured to withdraw because of a past work of scholarship. The consultant said that search committees of course talk about "fit" between a candidate and an institution.

But he added that "I don't think a person's scholarship and ability to administer" are correlated, and that the institutions he works with "want an able administrator," and have no interest in imposing "a political test." Institutions that let candidates be discouraged because of their politics end up losing good talent and "get what they deserve," he said.

Chandler's appointment at Kennesaw State seemed like a logical move up, given that he had served in the

provost's office at Kent State, a growing public regional university. The controversy started with a column in *The Marietta Daily Journal*, written by three of the newspaper's top executives.

The headline of the article suggested that Kennesaw State might need a new color (red) to go with its traditional black and gold. The column went on to give a series of citations of Marx or of Marxist philosophy that appear in Chandler's 1998 journal article, such as "Increased competition results in increased ethnicity and racism." And: "Ownership is taken for granted in capitalistic societies and is central to the accumulation of wealth and domination. All ownership of land or material means of production was at one time or another obtained by force." And: "While the United States has the most sophisticated propaganda apparatus ever assembled, it is also the most violent nation-state in history."

The column closed by wondering whether Kennesaw State's alumni and business backers would want to work with the new provost. And in case anyone missed the point, a follow-up column said that those who wondered about the fate of Chandler's appointment were among the "Kremlinologists" trying to figure out the situation.

The columns also attacked Chandler for having had as his co-author a Kent State professor who has argued for the possibility of Bush administration complicity in the September 11 attacks, although it should be noted that the journal article in question was written several years before 9/11. The original column was picked up by right-leaning blogs, with posts such as "Southern university hires Marxist provost?"

The article of Chandler's that led to the furor ran in *The Journal of Higher Education* and is a critique of the way colleges and universities have applied or failed to apply the ideas of Ernest Boyer's *Scholarship Reconsidered*.

Boyer's work argued for a broader definition of scholarship, one that would include research-based efforts related to pedagogy or service, and that would get out of the tradition of defining research contributions simply by the number of books published or grants won. The article's analysis of Boyer's work suggested that he didn't go far enough, saying that Boyer was only "tinkering" with faculty reward systems, rather than considering larger changes that are needed in higher education.

The article argues that "with little or no say in the distribution of resources, faculty decision-making power regarding academic matters has limited impact, at least to the extent that the latter is dependent upon the former. In effect, faculty are given decision-making power as long as they do not upset the social order." To deal with this problem, the authors propose that "true participatory democracy" be brought to the university.

"We suggest replacing career ladders where faculty rise through the ranks to become administrators removed and isolated from the real 'business' of the university, discovery and dissemination of knowledge, with career lattices where administrative positions are webs of roles that change hands and impose fewer limits on individuals, their talents, and their interests. We envision a university where talents better match with tasks, promotion and tenure are reconceived, and a community of scholars works on important problems using a broad array of techniques of discovery. Furthermore, inter- and cross-disciplinary study would become far more common as scholars became more problem-oriented and less paradigm-restricted."

In an interview, Chandler said that in administrative positions at Kent State, he has in fact promoted collegial decision-making, but that he has also done all of the kinds of things that come with academic hierarchies. He has hired and fired, turned down budget requests, and so forth. Looking at the reaction to his article, Chandler said that there may be a lesson for academe.

"I think it's probably incumbent on us to explain the role of academic writing, and the role of academic freedom—of the idea of testing and pushing ideas, and of encouraging people to think differently," he said. Many non-academics view academic writing as literal "advocacy," he said, in a way that isn't necessarily the case.

In that context, he said, quoting Marxist theory should be seen—as is the case with him—not as an endorsement of all things Marx. "I see it as one lens through which we can observe and look at the world we are trying to understand," especially with regard to issues of social class. "I'm not saying it's the only way or the best way, but it's a way, and those theories do have something to offer," he said.

Some of the writing in Georgia critical of Chandler has noted that he is a native of Britain—"another strike," he quipped. He came to the United States to earn his Ph.D. at Stanford University and has stayed on, becoming a citizen. Much of his scholarship has been on the role of athletics and education in society, and he is the co-author or co-editor of the books *Sport and Physical Education: The Key Concepts*, *With God on Their Side: Sport in the Service of Religion* and *Making Men*: *Rugby and Masculine Identity*.

Chandler said that he thinks Britain may be more accepting of Marxist scholarship because of the dominant role of class issues in examining the country. "I think there has been a tradition of listening to and understanding a broad range of ideas on class and hierarchy," he said. "And remember where Marx wrote," he said.

Hugh D. Hudson Jr., chair of history at Georgia State University and executive secretary of the Georgia conference of the American Association of University Professors, said that faculty members at Kennesaw State are "very concerned" about the implications of what happened to Chandler. "Public pressure can play an inordinate role. Outsiders made it a very difficult position for him to come into," Hudson said.

Hudson said that "it is the responsibility of the faculty to remind the community" of the value of academic freedom.

"It's unfortunate that more people did not rise up in defense of academic freedom."

An education professor who is part of the Marxian Analysis of Society, Schools and Education Section of the American Educational Research Association said she was saddened by what had happened to Chandler. "People think Marxism is the same as Communism, and they are not," she said. "Using a Marxist analysis just says that you know we have a class system and you are looking at it, but class analysis has become a dirty word."

Another search consultant, who also has no ties to Kennesaw State and asked not to be identified because of the industry standard of not commenting on other searches, said she thought Chandler "dodged a bullet." "I think it would have been dreadful for him," she said. "The local press would have hounded him, and you've got people in legislatures these days looking for reasons to cut higher ed. He would have been the whipping boy."

But this search consultant said that Kennesaw State may be the real loser. "Would a really good candidate who values intelligent intellectual discourse want to go there right now?" she said. "They just cut their pool of good people dramatically."

As for Chandler, he said he was very happy to be back at Kent State. "I'm in an incredibly supportive environment, and an environment that values academic freedom," he said. Reported in: insidehighered.com, March 18.

Ann Arbor, Michigan

A free market-oriented think tank in Michigan has sent the state's three largest public universities open-records requests for any e-mails from their labor-studies faculty members dealing with the debate over collective bargaining in Wisconsin.

The Mackinac Center for Public Policy, based in Midland, Mich., sent the requests March 25 to labor-studies centers at Michigan State University, the University of Michigan at Ann Arbor, and Wayne State University. The boilerplate wording on the requests, as first reported by the blog Talking Points Memo, asks the universities to provide all e-mails from the employees and contractors of their labor-studies centers containing the words "Scott Walker," "Wisconsin," "Madison," and "Maddow," in reference to Rachel Maddow, the liberal commentator on MSNBC. Walker is the Republican governor of Wisconsin.

The records requests, covering the faculty members' correspondence from January 1 through March 25, also ask for "any other e-mails dealing with the collective-bargaining situation in Wisconsin."

The requests resembled one the Republican Party of Wisconsin sent the previous week to the University of Wisconsin at Madison seeking any e-mails that a professor on that campus, William Cronon, had sent in reference to the state's volatile labor situation or several prominent Republican lawmakers, including Walker (see page 121).

That open-records request has been denounced in statements issued by the American Association of University Professors and the American Historical Association as likely to have a chilling effect on the academic freedom of university faculty members.

The Mackinac Center's open-records request was sent by a research associate at the direction of Ken Braun, managing editor of one of the center's newsletters, *Michigan Capital Confidential*. In an interview Braun refused to discuss exactly why his center had sent the letter, saying it does not comment on its investigations in progress. But, he said, "there is a very specific type of discussion that I am looking for, and that is why it is targeted at these three unique departments at these three universities."

"I hope the universities respond to our requests as fast as they sent them out to bloggers," he said.

Braun denied being on a fishing expedition intended to expose faculty members' political beliefs or activities. "If I were going on a 'politics of professors' search, I would have cast the net much wider," he said.

The requests were directed at the Douglas A. Fraser Center for Workplace Issues at Wayne State, the Labor Studies Center at the University of Michigan, and the School of Human Resources and Labor Relations at Michigan State.

Rick Fitzgerald, a spokesman for the University of Michigan, confirmed that it had received the open-records request. He said the university would process it in accordance with its usual procedures pursuant to the Michigan Freedom of Information Act. Officials at Michigan State and Wayne State had yet to comment.

The e-mail requests in Michigan and Wisconsin represent an innovative use of state open-records laws largely unforeseen by the lawmakers who carved out exceptions to those measures to accommodate the needs of public colleges.

Several college officials and national experts on academic freedom and records laws said they had never previously heard of such measures being cited to try to gain access to politically oriented messages from individual professors.

And, while the Michigan and Wisconsin e-mail requests were denounced by the American Association of University Professors and others in academe as likely to chill academic freedom, the reality is that the phrase "academic freedom" appears nowhere in any state's list of allowable reasons for public colleges to turn down records requests, according to a database maintained by the Reporters Committee for Freedom of the Press.

Although federal law prevents the disclosure of much information on individual students contained in such e-mails, and many states' records laws have exceptions for e-mails that are purely personal in nature or deal with

unpublished research, closed meetings, or personnel decisions, there simply are no blanket exceptions intended to protect faculty members from efforts to obtain the sorts of e-mails covered under the new open-records requests.

Robert M. O'Neil, general counsel of the AAUP and founding director of the Thomas Jefferson Center for the Protection of Free Expression, said state open-records laws vary greatly in terms of the types of exceptions provided for the correspondences of faculty members, and some offer no exceptions at all.

Charles N. Davis, an associate professor of journalism at the University of Missouri at Columbia and a former executive director of the National Freedom of Information Coalition, said the question of whether concerns over academic freedom should preclude access to faculty members' e-mails might be interesting to mull over in the abstract, but, "legally, I don't think it is a question at all."

Davis added, however, that the lack of a current legal exception to open-records requests based on concerns about academic freedom does not mean "some bright lawyer" might not come along "and fashion an academic-freedom argument that might work."

The American Association of University Professors, which issued a statement denouncing the Wisconsin open-records request as a threat to academic freedom, reacted similarly to Michigan requests after news of them broke on the blog Talking Points Memo.

"Universities must do everything in their power to resist and condemn this wave of intimidating e-mail requests. It represents a bald effort to suppress faculty speech rights," Cary Nelson, president of the AAUP, said in a written statement.

"American education," he said, "cannot survive nonstop political raids on its community members' freedom to reflect on and debate the issues that shape our public life."

Gregory F. Scholtz, an associate secretary of the AAUP, argued in an interview that "professors are not government employees in the same sense that government officials are, or bureaucrats are."

He added: "Our ability to maintain the best higher-education system in the world is going to be threatened if faculty members have to be constantly thinking about the possibility that their e-mails to their students and colleagues are going to be published somewhere. What does this do for the quality of teaching and research?"

But Timothy D. Smith, a professor of journalism and mass communication at Kent State University and chairman of the Media Law Center for Ethics and Access, which is based there, said "I don't see an academic-freedom problem arising" from such open-records requests. "I am not being told what I can or cannot teach in my classroom," he said, and Cronon "isn't either."

While large public research universities field hundreds of public-records requests annually, officials say that it is highly unusual to receive requests for the correspondence of an individual faculty member, and that wide-ranging requests of the sort Cronon and the Michigan faculty face are extremely rare.

"I don't recall any wholesale effort to collect e-mail and related works from a faculty member here, particularly for any kind of perceived political effort," said Thomas P. Hardy, executive director for university relations for the University of Illinois, whose three campuses fielded some 600 public records requests last year.

At Ohio State University, the "vast majority of requests" are in reference to the university president, vice president, or athletic department, said a university spokeswoman, Amy Murray. "There aren't a lot of requests of individual faculty members—maybe 10 percent of the total—and those are typically related to litigation, like if there's a divorce going on," she said. "The situation in Wisconsin didn't even ring a bell for us .... I've never heard of anything like that, and I've been here 25 years."

Under Ohio law, she said, faculty e-mail messages are public documents, but messages in which one expressed a political opinion to a spouse or co-worker would be categorized as personal and, thus, not released.

At the University of Iowa—which, since November, has posted all of the public-records requests it receives on the Web—nearly two-thirds of all requests come from reporters, and nearly a fifth from sports agents and lawyers.

The athletics department is the most popular target, accounting for 36 percent of the 245 requests fielded in 2010. "Many of them are looking at the contracts of our coaches, probably for the purposes of contract negotiations," said the university's interim spokesman, Thomas Moore. Other requests are driven by news events, such as the hospitalization of 13 football players this year with an unusual muscle condition.

Moore said that the university has received comprehensive requests for faculty e-mail messages in the past, but that under Iowa law, messages of a personal nature are not in the public domain. "If you write, 'Honey, please stop by the store on the way home,' that's not in the public domain," he says, adding that the university's general counsel reviews the documents and determines which are eligible for disclosure.

"As a public institution, we always try to err on the side of being open and transparent," he added.

All three universities noted that communications involving students are exempt from public disclosure under the federal Family Educational Rights and Privacy Act, or FERPA. "If we had to produce some kind of faculty or staff communication or e-mail that had a student identifier, we would redact that," said Hardy of the University of Illinois.

But, he added, in Illinois at least, faculty and staff should be aware that their university e-mail and correspondence are subject to disclosure. "It's a lesson that some people learn the hard way," he said.

Under an agreement negotiated with Kent State's faculty union in 2001, the university's administration pledged

to "make a good-faith effort" to warn professors of any open-records requests seeking to gain access to their e-mail account. Smith of Kent State said the advance warning at least provides him, as a faculty member, a chance to go to court "to intercede if I want to keep anybody from wandering through my e-mail looking for something that might embarrass me."

Davis at the University of Missouri predicted that the Michigan and Wisconsin universities that have received the recent open-records requests will have lawyers sitting down reviewing each e-mail covered to see if there is a reason to withhold it. "If you start asking for stuff that no one has asked for before, you can expect pushback," he said. "It is part of the game." Reported in: *Chronicle of Higher Education* online, March 29.

Riverdale, New York

Adjunct instructors at Manhattan College finished voting March 2 on the question of whether to form a union at their institution. But the ballots might not be counted for weeks, if ever, because of the Roman Catholic college's continued efforts to challenge the election as the product of an unconstitutional intrusion of the federal government into its affairs.

Manhattan College has appealed a January decision by the National Labor Relations Board's regional director in New York to allow the college's nearly 200 adjunct instructors to vote on whether to form a union affiliated with the New York State United Teachers. The board plans to impound the ballots until its appeals office reaches a decision. The election could be rendered moot if the board ends up ruling in favor of the college, which was established in 1853 by the De La Salle Christian Brothers.

The dispute, closely watched by labor unions and religious organizations, hinges on the question of whether the college remains religious enough that any NLRB involvement in its affairs would violate the First Amendment's clauses barring the government from establishing religion or prohibiting its free exercise.

In the decision he rendered in January, Elbert F. Tellem, an acting NLRB regional director, held that the college is too secular to be outside the board's purview, citing various instances in which it "is decidedly not holding itself out as a religious organization" to students, job applicants, and the public.

The college argues in its appeal that it is, in fact, pervasively religious and that the board's decision to weigh its religiousness represents, in itself, unconstitutional government intrusion into its affairs.

"I think we have a very strong position in this," Brennan O'Donnell, president of Manhattan College, said. "I was surprised at the tack that the regional director took."

Leaders of the unionization effort expressed frustration at the college's continued effort to fight it. "It is simply a delaying tactic," said Randolph M. Schutz, an adjunct professor of psychology and a founding member of the union drive's organizing committee. "There is nothing in any part of this process that I can imagine is a threat to the Catholic integrity and Catholic teaching program of the college."

The college has been fighting unionization for more than a decade. The NLRB had given all teaching faculty members at Manhattan College the right to collectively bargain back in 2000, but its faculty members then voted to not form a union after all. Changes in the college and in the law since that time have forced the NLRB to take new factors into account in considering the unionization petition that adjunct faculty members filed in October.

Much of the current dispute involves conflicting views of how the board and courts should apply a landmark 1979 Supreme Court decision involving an effort to unionize parochial school teachers, *National Labor Relations Board* v. *Catholic Bishop of Chicago*, and various rulings handed down by lower federal courts in more-recent years.

In its *Catholic Bishop* ruling, the Supreme Court held that the NLRB would run afoul of the First Amendment in exercising jurisdiction over parochial schools that are focused on the propagation of religious faith. In a 2002 decision involving the University of Great Falls, a Roman Catholic institution in Montana, the U.S. Court of Appeals for the District of Columbia Circuit held that the NLRB should not be in the business of determining whether a college is sufficiently religious to fall outside of its jurisdiction.

That court also set out a "bright line" test to determine if a college qualifies for an exemption from NLRB authority, based on the answer to three questions: Does the college hold itself out to the public as a religious institution? Is it nonprofit? And is it religiously affiliated? The test was applied by that circuit court again in 2009 in denying collective-bargaining rights to a faculty union at Carroll University, a Presbyterian institution in Wisconsin.

In allowing the latest Manhattan College election to go forward, Tellem, the regional NLRB director, argued that the board has not officially adopted the test put forward by the court in the Great Falls case, and that Manhattan College would fail that test anyway. He based his conclusion mainly on his assessment that that college has sought to strike a balance between maintaining a Catholic feel and emphasizing independence, academic freedom, diversity, and a secular mission.

His decision noted that the religious order that established the college does not wield any control over it, that its faculty members are hired based not on their religious beliefs but on their academic qualifications, and that the college does not proselytize to its student body, which is 65 percent Catholic.

Manhattan College—one of six Lasallian colleges in the United States—has argued that Tellem's decision is based on a misunderstanding of Catholic colleges and how they now operate. In a statement issued a few days after the decision was rendered, O'Donnell, the college's president, said, "Apparently the union and the government mistake our intellectual openness and welcoming spiritual environment, which we consider to be strengths of the Catholic intellectual tradition, as weaknesses." O'Donnell said his college's resistance to unionization stems not from any worries about the possible budgetary repercussions, but from opposition to government entanglement in its affairs.

"You don't need the union and the threat of entanglement it brings in order to do justice to your employees," O'Donnell said. He argued that unions are just one potential means to ensuring justice for employees. "We are perfectly capable of doing justly by our employees without a union and all of the potential negatives that a union brings with it," he said.

But Julie Berman, an organizer for New York State United Teachers, noted that the college already has unions representing its security guards and maintenance personnel and argued that a union for adjuncts would have no effect on the college's Catholic nature. "Nobody is trying to dictate how many crucifixes they hang up, or their extracurricular activities, or things like that," said Berman, whose statewide union is affiliated with the AFL-CIO, the American Federation of Teachers, and the National Education Association.

Catholic Scholars for Worker Justice, based in Weymouth, Massachusetts, has issued a statement supporting the unionization of adjunct faculty at Manhattan College based on the group's belief that unionization is fully in keeping with the church's teachings on social justice. The group's chairman, Joseph J. Fahey, a professor of religious studies at Manhattan College, said, "It is ludicrous to argue that having a union at a Catholic college contradicts the mission of the college. It fulfills the mission of the college."

Deborah L. Harris, an adjunct instructor of education at Manhattan College who has helped organize the unionization effort, said that, as a lifelong Catholic, she would not be involved with such an effort if she believed it would interfere with the institution's Catholic mission. Her motives, she said, are financial, stemming from her belief she is underpaid for the work she does. "We really don't have the same privileges and salary levels as the full-timers have," she said. Reported in: *Chronicle of Higher Education* online, March 8.

Madison, Wisconsin

The University of Wisconsin at Madison said April 1 that it would release to the state's Republican Party records a party official had sought from the e-mail account of a Madison professor who had criticized the governor and Republican-backed legislation to curtail the collective-bargaining rights of university and other public employees in the state.

Carolyn A. (Biddy) Martin, Madison's chancellor, said the university would not, however, release e-mails that it considers to be "the private e-mail exchanges among scholars that fall within the orbit of academic freedom and all that is entailed by it." Martin also said the university would exclude communications that "fall outside the realm of the faculty member's job responsibilities" and that the university said could be considered personal under Wisconsin Supreme Court case law. And the university will not release records involving students, whose communications are exempt from public disclosure under the federal Family Educational Rights and Privacy Act.

Martin had previously announced that the university would comply with the open-records request, which was made by Stephan Thompson, deputy executive director of the Wisconsin Republican Party. He had asked for all e-mails to or from the state e-mail account of William Cronon, a tenured professor of history, geography, and environmental studies at Madison, as of January 1 that contain certain keywords. Those include "Republican," "Scott Walker" (the name of Wisconsin's governor, a Republican), "recall," "collective bargaining," "rally," "union," the names of ten Republican lawmakers, the acronyms of two state public-employee unions, and the names of those two unions' leaders.

In a statement Martin said the university had analyzed the public-records request from Thompson, as it does with all records requests, by applying "the kind of balancing test that the law allows, taking such things as the rights to privacy and free expression into account."

The chancellor made clear in her statement that the university intended to protect a "zone of privacy" for scholars and scientists so they can pursue knowledge without fear of reprisal.

"When faculty members use e-mail or any other medium to develop and share their thoughts with one another, they must be able to assume a right to privacy of those exchanges, barring violation of state law or university policy," Martin said. "Having every exchange of ideas subject to public exposure puts academic freedom in peril and threatens the processes by which knowledge is created.

"The consequence for our state," she continued, "will be the loss of the most talented and creative faculty, who will choose to leave for universities where collegial exchange and the development of ideas can be undertaken without fear of premature exposure or reprisal for unpopular positions."

Martin said the university had reviewed Cronon's records for any legal or policy violations, including improper uses of state or university resources for partisan political activity, and found none.

Mark Jefferson, executive director of the Republican Party of Wisconsin, issued a brief statement that thanked the university for complying with the open-records request and thanked Martin for her statement.

"We share her belief that university faculty are not above the rules prohibiting the use of state resources for political purposes," he said. "Like other organizations from across the political spectrum, the Republican Party of Wisconsin has a longstanding history of making open-records requests, and we will continue to exercise our right to do so in the future."

The university's response could set up a battle over what public records it must divulge. The open-records request made by Thompson and a similar request directed at Michigan's three largest public universities by the free-market-oriented Mackinac Center for Public Policy (see page 110) were denounced by the American Association of University Professors and others in academe as likely to chill academic freedom. But the phrase "academic freedom" appears nowhere in any state's list of allowable reasons for public colleges to turn down records requests, according to a database maintained by the Reporters Committee for Freedom of the Press.

Citing a need to protect "academic freedom" is, in itself, unlikely to help the universities avoid complying with requests for e-mails under state open-records laws, according to several national experts on academic freedom and records laws.

Although federal law prevents the disclosure of much information on individual students contained in such e-mails, and many states' records laws have exceptions for e-mails that are purely personal in nature or deal with unpublished research, closed meetings, or personnel decisions, there are no blanket exceptions intended to protect faculty members from efforts to obtain the sorts of e-mails covered under the Wisconsin and Michigan open-records requests.

William Cronon, the Frederick Jackson Turner and Vilas Research Professor of History, Geography and Environmental Studies at Madison and President-Elect of the American Historical Association, is among the university's most visible and highly respected scholars. Like many of his colleagues, he has been greatly disturbed by Governor Walker's approach to public employee unions, and he has made use of his prominence to take his critique public, in high-profile ways.

Most visibly, he published an op-ed in *The New York Times* in which he sought to show that the Republican governor's "assault on collective bargaining rights" represents a break with his state's (and the GOP's own) history, and drew a parallel between Walker and one of his forebears in Wisconsin's Republican Party, Joseph McCarthy.

But some of Cronon's other writings are less historical. He began a blog in March, called Scholar as Citizen, and its first post, on March 15, sought to lay out "who's really behind" the anti-union legislation in Wisconsin and elsewhere. The blog post discussed the role that national groups like the American Legislative Exchange Council play in spreading conservative ideas and seeding conservative policies at the state and local level, and suggests — while acknowledging that direct evidence is hard to find — that the groups have helped engineer Walker's agenda.

"One conclusion seems clear: what we've witnessed in Wisconsin during the opening months of 2011 did not originate in this state, even though we've been at the center of the political storm in terms of how it's being implemented," Cronon wrote. "This is a well-planned and well-coordinated national campaign, and it would be helpful to know a lot more about it."

Two days after that blog post, Thompson filed the open-records request asking lawyers at Wisconsin-Madison for all e-mail messages into and out of Cronon's university e-mail account that mentioned Walker and other Republican legislative leaders or used the terms "Republican," "collective bargaining," and "recall," among others.

"The timing of Mr. Thompson's request surely means that it is a response to my blog posting about the American Legislative Exchange Council, since I have never before been the subject of an Open Records request, and nothing in my prior professional life has ever attracted this kind of attention from the Republican Party," wrote Cronon, who surmised that the open-records request was designed with the goal of finding evidence that he had violated Wisconsin's prohibition on use of state resources for "partisan political purposes." He called on the party to withdraw its request.

"Mr. Thompson obviously read my blog post as an all-out attack on the interests of his party, and his open records request seems designed to give him what he hopes will be ammunition he can use to embarrass, undermine, and ultimately silence me," he continued. "I'd be willing to bet quite a lot of money that Mr. Thompson and the State Republican Party are hoping that I've been violating this policy so they can use my own emails to prove that I'm a liberal activist who is using my state email account to engage in illegal lobbying and efforts to influence elections. By releasing emails to demonstrate this, they're hoping they can embarrass me enough to silence me as a critic."

"Yes, my e-mail address is paid for by taxpayers, but does that mean that nothing confidential can ever happen on that e-mail address?" Cronon asked. "That strikes me as a really unfortunate precedent to set."

"I am absolutely confident that there is nothing in these e-mails that is inappropriate," said Cronon, who characterized himself as "a relentless centrist in my own

(continued on page 121)

success stories

libraries

Litchfield, Connecticut

There were no fireworks, and no picket signs or megaphones. There was only a room full of listeners during Dr. Mazin B. Qumsiyeh's lecture March 24 at the Oliver Wolcott Library.

Dr. Qumsiyeh's presentation focused on his latest book, *Popular Resistance in Palestine: A History of Hope and Empowerment*, which addresses his ideals on human rights in Palestine, media activism, public policies and popular, non-violent resistance. The event was sponsored by Middle East Crisis Committee of New Haven (MECC).

Sitting front and center at the discussion was Rabbi Joseph I. Eisenbach—who voiced his opposition to the event the day before. He was one of nearly 70 people listening as Dr. Qumsiyeh delivered a speech on non-violent resistance, humanitarianism and the hope that some day all people in the Holy Land can live together harmoniously. While some in the audience snickered at the thought, Dr. Qumsiyeh was a bit more optimistic.

"I like looking at the glass as half full," he said near the beginning of a slideshow that was part of the presentation.

After an introduction by his Jewish friend Stanley Heller and briefly covering the history of Israel, Palestine and the West Bank—all areas of what he called "atrocities"—Dr. Qumsiyeh, a genetics professor in Bethlehem, and a Christian, Palestinian-born, American citizen, spoke for over an hour on displaced Palestinian refugees and Israeli policies.

Meanwhile, the library's community room, packed with people from all backgrounds, religions, races and beliefs, watched Dr. Qumsiyeh and waited for the end of the session, a time set aside for questions, debate and a book-signing.

Following a handful of questions and statements voiced from both sides of the historical argument, Rabbi Eisenbach, the leader of Chabad Lubavitch of Northwest Connecticut, stood up and asked his own question.

"My question to the doctor is, how does he feel about the atrocity that had happened last Saturday night when parents who were sleeping and three other children were slaughtered by their throats?," Rabbi Eisenbach asked, referring to a family alledgedly murdered by Palestinian militants. "Does he find that as an atrocity or does he find that what he calls 'peaceful resistance'?"

"Yes I find that as an atrocity," Dr. Qumsiyeh answered, "as I found it as an atrocity that ten times more Palestinian civilians were also butchered in the same period. I find all these atrocities horrific and should be condemned by everybody."

Rabbi Eisenbach had reacted more strongly two days earlier when he learned about the author's scheduled talk, and wrote in an e-mail that Dr. Qumsiyeh's message was anti-Semitic.

"What we are witnessing today is the second great mutation of anti-semitism in modern times, from racial anti-semitism to religious anti-Zionism with the added premise that all Jews are Zionists," he wrote. "It uses all the medieval myths. The mutation is this; that the worst crimes of anti-Semites in the past—racism, ethnic cleansing, attempted genocide, crimes against humanity—are now attributed to the Jews and the state of Israel."

Rabbi Eisenbach had said participating members of the Chababd Lubavitch of Northwest Connecticut would gather at noon at their building, for "Pro-Israel bagels and coffee" before moving on to the library. He also said many in the Litchfield area were outraged that the library is allowing use of its community room for what he believes is Qumsiyeh's "erronous account of the conflict."

During the program, through stories of "atrocities" and non-violent resistance, Dr. Qumsiyeh shared personal narratives, historical accounts and news stories, but also offered solutions of boycotts and divestments. Dr. Qumsieyh, who calls himself a pacifist, said he bases his morals and beliefs in Christianity.

"We still believe our message is of shepherds and the Prince of Peace," he said about his fellow Palestinian Christians. "Jesus was the Prince of Peace."

"Authority wants us to be afraid," Dr. Qumsiyeh said, referring to times of crossing the "green line" into Israel's Jerusalem. "They want the people to be afraid so they get more power."

Though the question-and-answer session had to be cut short due to time constraints, people still lined up at the

table to ask the author questions. Dr. Qumsiyeh signed books and people left discussing the constantly debated topic. Outside a few extended remarks, the event went on as planned.

"I think it went very well," said organizer Joseph Mustich from Cornet Mustich Media of Washington.

"We are people of various religions struggling together," Dr. Qumsiyeh said. "We have to realize that there are people who do good things." Reported in: *Litchfield County Times*, March 25.

Hillsborough County, Florida

After weeks of a review process, the Hillsborough County Public Library System has ruled that a controversial children's book will stay on public library shelves. The book is *My Mom's Having a Baby*, by Dori Butler. Published in 2005, the book tells of a little girl named Elizabeth who is curious about how her mother became pregnant and childbirth. Throughout the book's thirty pages, little Elizabeth learns about these topics in great detail.

Because of parent complaints, the Hillsborough County public library system reviewed the book to see if it is appropriate for public library shelves. Manager of Materials and Circulation Marcee Challencer said the book will stay in its collection and continue to be cataloged in the juvenile section. She explained the book's title and content are "more open" than similar books about pregnancy. Challencer said, "The openness has its place in the library collection and provides options for parents who are comfortable with it."

Any child with a library card is able to check-out the book without parent supervision at libraries within the Hillsborough County system.

The book's author, Dori Butler, said the book is intended to be read by a parent and child together. Local library leaders echoed that suggestion and added that parents are ultimately responsible for what their children are reading. Reported in: abcactionnews.com, March 28.

York, Pennsylvania

The Central York School Board will not remove a book that has been criticized for violent themes from an elementary school library.

Stolen Children, by Peg Kehret, centers on the kidnapping of a 13-year-old girl and her 3-year-old babysitting charge. District parent Megan Ketterman asked the school board at a meeting in January to remove the book because she thought it was too violent.

Board president Michael Wagner said February 15 the board reviewed the book and decided not to remove it. He said Ketterman was notified of the decision in writing.

Ketterman, whose daughter brought the book home last year, had said she thought the book wasn't appropriate for the elementary level and at least wanted it placed at a higher level. She objected to violence, specifically the girls being kidnapped at gunpoint and a knife being held to the young child's throat.

"I expressed my disappointment with the board's final decision and was told that there was nothing else I could do to appeal the decision, and also told him that I am extremely disappointed with the lack of common sense in deciding not to move the book to the intermediate school," Ketterman said.

A school district committee reviewed the book last year and determined it was appropriate for the library, noting that while the threat of violence is used, no violence actually occurs. The review also noted that the kidnappers were portrayed as bad guys and eventually arrested.

Appealing to the school board is the final step for someone to challenge a book, according to school district policy. Reported in: *York Daily Record*, February 16.

Wausau, Wisconsin

Marathon County officials agreed March 31 to allow the showing of a controversial anti-abortion film at the downtown Wausau library April 3.

Library Director Ralph Illick canceled the event the previous week, arguing that protesters of the film would affect library operations. The group sponsoring the event, 40 Days for Life, sued Illick and other county officials in federal court March 30.

A hearing on the group's request for a restraining order against Illick, that would have allowed the event to go forward, was scheduled in federal court in Madison April 1. An attorney representing the group was not available to discuss whether the members plan to take any further legal action.

Marathon County Corporation Counsel Scott Corbett said county officials conferred with an attorney for their insurance company and determined that there was not enough evidence that protests would lead to a "civil disturbance" to cancel the event.

The suit claims the county violated the group's First Amendment rights to free speech after it canceled a reservation for a meeting room where the film "Blood Money" was scheduled to be shown.

"Defendants' conduct constitutes illicit, standardless censorship and suppression of free speech," according to the group's complaint, which named library director Illick, county board chair Keith Langenhahn and the library board.

"The suppression of this movie was explicitly based, post hoc, on its subject matter related to the abortion issue – content-based viewpoint discrimination which is devoid of any compelling justification."

According to the complaint, Illick canceled the reservation, claiming that showing the film would interfere with the normal use of the library. Illick cited Internet postings that indicated the possibility of protests if the library allowed the group to show the film.

But the group said "audience reaction to speech, especially when merely hypothetical and speculative – as here – gives government no grounds for censoring it, let alone banning or suppressing it as defendants threaten to do here."

The county originally defended its policy in a letter sent March 29 and offered to let the group show the film at its building across the street from the library.

"If the display of the film by your client's group provoked a civil disturbance inside the library, the result would be interference with the normal use of the library," county corporation counsel Scott Corbett said in the letter.

Organizers requested a temporary restraining order that would block the county from banning the movie at the library. The group said having police officers on hand could adequately protect against any possible disruption caused by a protest.

Previously, attorneys for 40 Days for Life's Wausau chapter wrote, in a March 28 letter addressed to county officials, that Illick blocked the event, citing the potential for counter-protests. The letter threatened "immediate legal action" if county and library officials do not allow the event.

Members of the group booked one of the library's meeting rooms at the beginning of March for a showing of "Blood Money." The film trailer claims it exposes the financial motivation of abortion providers.

Janet Nichols, a member of the group, said library employees didn't ask questions about the topic of the film when the event was planned. She said Illick told organizers that he had seen plans for counter-protests on Facebook and felt allowing the showing would disrupt the library.

Corbett confirmed that Illick was the official who canceled the showing because a public disturbance would impair library operations. The library's meeting room policy makes space available to all groups "on an equitable basis, regardless of the beliefs or affiliations of individuals or groups." But the policy also allows the library director to refuse use for any purpose that "may interfere with the normal use of the library." Reported in: *Wausau Daily Herald*, March 28, 31; wsau.com, March 30.

university

Iowa City, Iowa

The same "kitschy 1970s" pornographic film University of Iowa leaders canceled a year ago has returned. "Disco Dolls in Hot Skin (in 3D!)," starring porn icon John Holmes, was shown on consecutive evenings in February at The Bijou Theater, a student-run theater in the Iowa Memorial Union.

"What better way to celebrate Valentine's weekend than with some kitschy 1970s 3D erotica?" an advertisement stated.

Last year, a University official directed the Bijou to cancel two showings of the film the day he learned it was scheduled, but the university did not intervene this year.

"It is clearly not in the public interest for a public facility at a public institution to be showing a film of this nature. If showing the film were essential to an educational objective, the situation would be different. The intent in this case was to provide entertainment," University of Iowa Vice President for Student Services Tom Rocklin said last year.

Rocklin deferred comment this year to University spokesman Tom Moore, who said the university "stands by its approach." Moore said Iowa conducted a legal analysis last year and determined that not allowing an otherwise legal film to be shown would violate First Amendment protections. When asked if prohibiting the film last year violated those rights, Moore did not respond directly to that question but said the university acted to ensure laws were being followed.

Moore said the university was utilizing protection allowed within the law, such as warning patrons of the nature of the film and banning minors. When asked if the movie is obscene, he said, "The university is not making a value judgment."

"(The university) recognizes the right of this student group to show this film as well as the right of patrons to view it," Moore said.

Bijou executive director D. Jesse Damazo, 28, a Master of Fine Arts student in film and video production, said that university leaders were on board with the showing this year because they had more information and were not caught by surprise.

"Essentially, we were just given a green light to go ahead," Damazo said. "We provided more information about the film. We are an alternative and independent cinema modeled after other alternative and independent cinemas. ... This is the kind of film that has made the rounds. It has had screenings at film festivals. It's not outside of our mission. Making some of that clear was important."

The Bjiou annually shows a pornographic film similar to "Disco Dolls." It is a tradition, Damazo said. "Pornography is part of film history, one way or another. We are a venue for cult films or films with historical value," he said.

The cancellation last year prompted a negative reaction by some who thought it infringed on free speech and it was wrong of the university to intervene in a

student-run organization. Kembrew McLeod, an associate professor of communication studies at UI, was among those who criticized the university. He said he thought the pornographic nature of the film was overblown and that canceling it was an example of bending to political pressure and set a bad precedent.

"Based on what I read about the film, it was more camp and soft-core sex than a hard-core 1970s porn film, which is why I thought the university's decision was so silly," McLeod said. "I was concerned this could be a slippery slope." Reported in: *Iowa City Press-Citizen*, February 10. □

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creationists …from page 92)

District in Pennsylvania five years ago (which kept explicit teaching of intelligent design, or ID, out of public schools) creationists shelved the ID language—at least publicly—and shifted their approach. More recently, they have tried to codify versions of the "strengths and weaknesses" language in states across the country—an effort that has so far met with limited success.

The closest that creationists came to getting such terminology on the books was in 2008 in Louisiana, where an initial "academic freedom" bill included the phrase, but was replaced with more watered-down language that nonetheless left the door open to teaching creationism, some science educators say.

Texas's State Board of Education (SBOE) tried to preserve ambiguous language in its science curriculum in 2009. (The wording had been on the books since the 1990s, having originally been inserted as a compromise to appease creationists.) But after religious conservative members of the board were unable to garner majority support, they dropped it in favor of phrases, albeit also dubious, that included the statement students should "analyze and evaluate the sufficiency of scientific explanations concerning any data of sudden appearance, stasis and the sequential nature of groups in the fossil records."

The home state of the Scopes Trial is now on the verge of adopting the "strengths and weakness" language with the February 8 introduction of House Bill 368. A week later, its identical counterpart, SB 893, was introduced in the Senate. Whereas similar bills in Oklahoma and New Mexico have already perished in committee this year, observers are watching Tennessee's developments warily.

"The fact that it's moving so quickly is a matter of concern," said Josh Rosenau, a spokesperson for the National Center for Science Education, a watchdog organization that monitors attacks on classroom teaching of evolution. "There appears to be some momentum behind it, which suggests it could pass."

As with other anti-evolution bills, the Tennessee legislation does not actually mandate the inclusion of creationist or ID teachings. Rather, it says that educators may not be prohibited from "helping students understand, analyze, critique and review in an objective manner the scientific strengths and scientific weaknesses of existing scientific theories covered in the course being taught."

As in the Louisiana law, those theories can include "biological evolution, the chemical origins of life, global warming and human cloning." The bill goes on to say that this only applies to scientific information, and is not "to be construed to promote any religious or nonreligious doctrine."

On the surface, the language looks like something that all scientists would gladly embrace: Promote critical thinking? Certainly! But opponents of the legislation say that the bills' backers intent is instead designed to undercut the teaching of evolution and open doors to creationism and intelligent design.

As with other anti-evolution bills, Tennessee's seems to be based on sample legislation written and promoted by the pro-ID Discovery Institute.

Sponsor Rep. Bill Dunn (R–Knoxville) said Fowler submitted the legislation to him in early February. The latter's organization is associated with James Dobson's conservative Christian Focus on the Family and advocates for "biblical values" and "godly officials." Dunn could not explain why a Christian organization would be pushing legislation that supposedly has nothing to do with inserting religion into science class. He referred the question to Fowler.

Fowler, who would not say whether he is a young earth creationist ("I think that's irrelevant," he noted), said he is trying to correct the "dogmatic" presentation of science in the classroom. "This is about open discourse," he said, adding, "Good education requires critical thinking."

Fowler has spoken with members of the Discovery Institute—he would not say specifically whom—and said he drafted the Tennessee bill based on sample legislation the Institute created.

Dunn explains: "We've reversed the roles of the Scopes Trial. All we're saying is let's put all the scientific facts on the table." Dunn said the bill would not allow the teaching of intelligent design. But in his op–ed piece Fowler specifically said it would protect a teacher who wanted to teach the concept, which a federal court ruled unconstitutional in *Kitzmiller* v. *Dover*.

"The bill is likely to result in significant violations of students' and parents' First Amendment rights," claimed Hedy Weinberg, executive director of the American Civil Liberties Union of Tennessee. "It is not necessary; and it threatens to undermine science education across the state, endangering the educational and employment futures of Tennessee's students as well as the state's own economic and job prospects."

With 60 percent of U.S. public high school biology teachers already shying away from evolution in the classroom, according to the results of a recent Pennsylvania State University survey, these anti-evolution bills send a warning message to ambivalent teachers to avoid the subject, Rosenau said.

While the fight heats up in Tennessee, anti-evolution battles continue in other states. In March, Texas's SBOE began the four-month review process of "supplemental materials," which will be used in place of costly new science textbooks. The creationist sympathies of several members of a board-appointed volunteer review panel have raised questions about whether the SBOE intends to use these additional publications to eventually open a door to creationism and ID-friendly materials into the classroom.

Meanwhile, in Louisiana a 17-year-old Baton Rouge Magnet High School student has begun a long-shot campaign to get lawmakers to repeal the state's pro-evolution law. Zack Kopplin has lined up support of one senator, who has said she is willing to introduce the legislation. Gene Mills of the Louisiana Family Forum (also affiliated with Focus on the Family) said he welcomes the attempt. "It's healthy to have discussions," Mills says, "but I don't think it's going anywhere."

Forty years after Scopes was found guilty for teaching evolution, he mused about an alternative outcome for his case if it had gone to the Supreme Court: "The Butler Act was an effort on the part of a religious group, the fundamentalists, to impose by law their religious beliefs on the rest of society. Our Founding Fathers, acquainted with the bloody religious wars in Europe, had written into the Constitution the right of religious freedom and had further provided, by means of the doctrine of the separation of church and state, that no religious group should control or unduly influence any arm of secular government. I believe that had we reached the Supreme Court we would have been victorious on this issue." Reported in: *Scientific American*, February 28. □

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censorship dateline …from page 98)

sad that they felt and still feel that being gay is so easily maligned that they could put it in writing." Reported in: insidehighered.com, February 28.

art

Augusta, Maine

A mural depicting Maine's labor history was removed from the lobby of the state's Department of Labor and stored at an undisclosed location during the weekend of March 26-27 by directive of Gov. Paul LePage. LePage, a Republican elected in 2010, said the mural favors labor interests at the expense of business interests. Earlier he ordered that the mural be taken down and that Labor Department conference rooms named for labor leaders be renamed for mountains, counties or something else perceived as neutral.

Robert Shetterly, president of the Union of Maine Visual Artists, called it "an exceptionally cowardly act" to move it over the weekend when no one would notice.

The three-year-old mural has eleven panels showing scenes of Maine workers, including colonial-era shoemaking apprentices, lumberjacks, a "Rosie the Riveter" in a shipyard and a 1986 paper mill strike. Taken together, his administration deems these scenes too one-sided in favor of unions.

A spokeswoman said LePage ordered the mural removed after several business officials complained about it and after the governor received an anonymous fax saying it was reminiscent of "communist North Korea where they use these murals to brainwash the masses."

"The Department of Labor is a state agency that works very closely with both employees and employers, and we need to have a décor that represents neutrality," said LePage's spokeswoman, Adrienne Bennett.

The mural was created by Judy Taylor, who won a 2007 competition overseen by the Maine Arts Commission to commission artwork for the department's lobby.

"I don't agree that it's one-sided," Taylor said. "It's based on historical fact. I'm not sure how you can say history is one-sided."

Taylor said she consulted with historians to do the mural, for which she received a $60,000 grant. "It didn't intend to be pro-business or pro-labor," she said. "By default, it's honoring the working man and working woman."

LePage has repeatedly clashed with labor unions since his inauguration in January. He is pushing for a higher retirement age for public employees and for "right-to-work" legislation that would allow union members to stop paying dues or fees.

Don Berry, president of the Maine State AFL-CIO, called the move "mean-spirited" and said that "99 percent of our business people won't have any problem with the mural."

Mike Tipping, a spokesman for the Maine People's Alliance, a progressive group, said, "People elected Governor LePage, hoping he would create jobs and not get involved in the interior decoration of state offices."

LePage also ordered that the Labor Department's seven conference rooms be renamed. One is named after César Chávez, the farmworkers' leader; one after Rose Schneiderman, a leader of the New York Women's Trade Union League a century ago; and one after Frances

Perkins, who became the nation's first female labor secretary and is buried in Maine.

Charles Scontras, a labor historian at the University of Maine, said: "Totalitarian regimes erase history as well. We manage to do it by indifference or neglect or for ideological reasons." He voiced surprise that a Franco-American like the governor, whose wife was once a union steward, would take such a move when the mural honored the work that generations of Maine's Franco-Americans had done in the shoe, textile and paper industries.

"The Department of Labor is owned by the people of the state," said Bennett, the spokeswoman. "We need to make sure we're representing all Mainers. The governor understands the value of history," she added. "That's why we're exploring placing the mural in the State of Maine Museum." Reported in: *New York Times*, March 23, 28.

foreign

Logan, Australia

The Logan City Council was accused of playing Big Brother after revelations it had banned books containing information on restricted dog breeds. Council library staff denied Regents Park man John Harrison access to *Pit Bulls and Tenacious Guard Dogs*, by Carl Semencic, because it had information about pit bulls.

Harrison said he made a request to Logan West Library to get the book after he was told Logan libraries did not have it. He said staff agreed to order the book, but a few days later was told they would no longer do so as the book contained information on banned dog breeds.

"I was just absolutely stunned and angry,'' Harrison said.

"Regardless of the subject, they are restricting me on what I can read or what I can't read. The book is available and they refused to get it in. What are they going to rule out in the future? The book covers a hell of a lot of other dogs that aren't restricted."

Harrison also said he requested the same book three years ago and did not have any problems then. *The Albert & Logan News* received the same response after a separate inquiry was made at a different Logan City library.

A council spokeswoman confirmed the policy.

"In 2001, Under Local Law 4 (Animal Management) Logan City Council placed a ban on, among others, pit bull terriers and American pit bulls,'' she said. "Therefore, Logan City Council libraries do not stock literature on any of the prohibited breeds."

Community, Sports and Customer Services Committee chairwoman Hajnal Ban said she was not aware of the policy. "I can understand why he (Harrison) is annoyed and I'll be speaking to the manager of the department and my colleagues to try and find out what we can do,'' she said.

Two days later, Ban said the policy was implemented because the council did not want to be seen as "encouraging or condoning ownership of the dogs. But I've been told they (council officers) are happy to review the policy on the matter,'' she said. "I think reviewing the policy will be a good thing to do." Reported in: *Albert and Logan News*, August 28. □

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from the bench …from page 104)

The editor, Joseph H.H. Weiler, a professor at New York University's School of Law, said he had been awarded €8,000 (about $11,000) as a result of the action brought against him by Karin N. Calvo-Goller, a senior lecturer at the Academic Center of Law & Business, in Israel.

Weiler is editor in chief of the *European Journal of International Law*; he also edits a related Web site, Global Law Books. In 2007 he published on that Web site a short review of a book by Calvo-Goller. The reviewer was Thomas Weigend, a professor of law at the University of Cologne. (Weigend was not named in the lawsuit.)

Calvo-Goller thought the review was defamatory and asked Weiler to take it down. He said no but offered her the chance to respond to it on the Web site, an opportunity she declined. Instead she brought a criminal-libel complaint against him in France. (Calvo-Goller is based in Israel but has French citizenship as well.)

The case alarmed other journal editors and reviewers, who worried that a decision in Calvo-Goller's favor would have a chilling effect on scholars' and editors' willingness to publish reviews. Weiler published an editorial in his international-law journal about the principles of academic freedom he felt were at stake in the matter.

The case was heard on January 20, 2011, by the Tribunal de Grand Instance de Paris, which handed down a decision February 24, according to Weiler.

In the ruling, the court said the review expressed a scientific opinion of the book and did not go beyond the kind of criticism to which all authors of intellectual work subject themselves when they publish. It agreed with Weiler's contention that the case did not properly fall within its jurisdiction anyway. It concluded that Calvo-Goller had engaged in forum shopping and had shown bad faith in bringing the complaint. It said it was ordering the plaintiff to pay the €8,000 to Weiler in reparation for the harm caused by the improper nature of her action.

Weiler posted an account of the ruling on his journal's blog, *EJIL: Talk!* Earlier, in a January 25 post, he described the legal strategy he and his lawyers used. They considered the action "an egregious instance of 'forum shopping' or "libel tourism,'" he wrote. "It was

important to challenge this hugely dangerous attack on academic freedom and liberty of expression," he said. "Reversing custom, we specifically asked the court not to examine our jurisdictional challenge as a preliminary matter but to join it to the case on the merits so that it would have the possibility to pronounce on both issues."

Weiler said he preferred to let the judgment speak for itself. He quoted the saying "Whoever adds, detracts." He also said that under French law, Calvo-Goller could appeal the ruling. Reported in: *Chronicle of Higher Education* online, March 2. □

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is it legal? …from page 114)

politics" and scrupulous about not using his university e-mail account "for anything that might be questionable." But, Cronon said, he is urging the state GOP to withdraw the open-records request as a matter of principle because he believes its request "will have a chilling effect on the university" by giving faculty members reason to fear that any e-mail they send will be made public as a result of politically driven efforts by their critics to fish around for information that will discredit them.

The perceived effort to use state law to crack down on a high-profile and well-connected scholar's criticism of a Republican governor's policies led to a blizzard of news articles after it was first reported on the political blog, Talking Points Memo. It also spurred many calls for Wisconsin Republicans to drop their open records request.

The American Historical Association, for instance, said its members support the use of freedom of information laws to "promote informed conversation." But in Cronon's case, the group said, "the law has been invoked to do the opposite: to find a pretext for discrediting a scholar who has taken a public position. This inquiry will damage, rather than promote, public conversation. It will discourage other historians (and scholars in other disciplines) employed by public institutions from speaking out as citizen-scholars in their blogs, op-ed pieces, articles, books, and other writings."

In a letter to President Martin on March 28, Gregory Scholtz, Associate Director of the AAUP, wrote: "We believe that disclosure of Professor Cronon's e-mail correspondence will inevitably produce a chilling effect not only on Professor Cronon's academic freedom, but also on the academic freedom of his faculty colleagues and of faculty members throughout the University of Wisconsin system, with potentially deleterious effects on the quality of research and teaching."

Scholtz's letter also compared the request to one made last year by Virginia Attorney General Kenneth Cuccinelli, a global warming skeptic. Cuccinelli demanded that the University of Virginia turn over to his office extensive records, including e-mail correspondence, of climate scientist and former University of Virginia Professor Michael Mann. In that instance, the AAUP, the ACLU of Virginia, the Union of Concerned Scientists, and the Thomas Jefferson Center for the Protection of Freedom of Expression at the University of Virginia asked a Virginia judge to void the request.

The barrage of requests for comment from Wisconsin's Republican Party prompted a response in which the group criticized Cronon's "deplorable tactics" in trying to force it to withdraw "a routine open records request" and questioned why Cronon (whose name the statement spelled as Cronin) "seems to have plenty of time to round up reporters from around the nation to push the Republican Party of Wisconsin into explaining its motives behind a lawful open records request, but has apparently not found time to provide any of the requested information."

"I have never seen such a concerted effort to intimidate someone from lawfully seeking information about their government," said the party's executive director, Mark Jefferson. "[I]t is chilling to see that so many members of the media would take up the cause of a professor who seeks to quash a lawful open records request. Taxpayers have a right to accountable government and a right to know if public officials are conducting themselves in an ethical manner. The Left is far more aggressive in this state than the Right in its use of open records requests, yet these rights do extend beyond the liberal left and members of the media." Reported in: *Chronicle of Higher Education* online, March 25, April 1; insidehighered.com, March 28; *New York Times*, March 26.

religious freedom

Gainesville, Florida

A controversial evangelical preacher oversaw the burning of a copy of the Koran in a small Florida church after finding the Muslim holy book "guilty" of crimes. The burning was carried out by pastor Wayne Sapp under the supervision of Terry Jones, who last September drew sweeping condemnation over his plan to ignite a pile of Korans on the anniversary of September 11, 2001 attacks.

The March 20 event was presented as a trial of the book in which the Koran was found "guilty" and "executed." The jury deliberated for about eight minutes. The book, which had been soaking for an hour in kerosene, was put in a metal tray in the center of the church, and Sapp started the fire with a barbecue lighter. The book burned for around ten minutes while some onlookers posed for photos.

Jones had drawn trenchant condemnation from many people, including President Barack Obama, Secretary of State Hillary Clinton and Secretary of Defense Robert

Gates, over his plan to burn the Muslim holy book in September. He did not carry out his plan then and vowed he never would, saying he had made his point. But this time, he said he had been "trying to give the Muslim world an opportunity to defend their book," but did not receive any answer. He said he felt that he couldn't have a real trial without a real punishment. The event was open to the public, but fewer than 30 people attended. Reported in: Yahoo! News, March 21.

government surveillance

Washington, D.C.

The Obama administration's Justice Department has asserted that the FBI can obtain telephone records of international calls made from the U.S. without any formal legal process or court oversight. That assertion was revealed — perhaps inadvertently — by the department in its response to a request for a copy of a secret Justice Department memo. Critics say the legal position is flawed and creates a potential loophole that could lead to a repeat of FBI abuses that were supposed to have been stopped in 2006.

The controversy over the telephone records is a legacy of the Bush administration's war on terror. Critics say the Obama administration appears to be continuing many of the most controversial tactics of that strategy, including the assertion of sweeping executive powers.

For years after the September 11 attacks, the FBI sought and obtained thousands of telephone records for international calls in an attempt to thwart potential terrorists. The bureau devised an informal system of requesting the records from three telecommunications firms to create what one agent called a "phone database on steroids" that included names, addresses, length of service and billing information.

A federal watchdog later said a "casual" environment developed in which FBI agents and employees of the telecom companies treated Americans' telephone records so cavalierly that one senior FBI counter-terrorism official said getting access to them was as easy as "having an ATM in your living room."

In January 2010, McClatchy Newspapers asked for a copy of the Office of Legal Counsel memo under open records laws after a reference to it appeared in a heavily excised section of a report on how the FBI abused its powers when seeking telephone records. In the report, the Justice Department's inspector general said "the OLC agreed with the FBI that under certain circumstances (word or words redacted) allows the FBI to ask for and obtain these records on a voluntary basis from the providers, without legal process or a qualifying emergency."

In its cover letter to McClatchy, however, the OLC disclosed more detail about its legal position, specifying a section of a 1978 federal wiretapping law that the Justice Department believes gives the FBI the authority. That section of the law appears to be what was redacted from the inspector general's report and reveals the type of records the FBI would be seeking, experts said.

"This is the answer to a mystery that has puzzled us for more than a year now," said Kevin Bankston, a senior staff attorney and expert on electronic surveillance and national security laws for the nonprofit Electronic Frontier Foundation.

"Now, 30 years later, the FBI has looked at this provision again and decided that it is an enormous loophole that allows them to ask for, and the phone companies to hand over, records related to international or foreign communications," he said. "Apparently, they've decided that this provision means that your international communications are a privacy-free zone and that they can get records of those communications without any legal process."

That interpretation could be stretched to apply to e-mails as well, he said. However, Bankston said, even if the law allows the FBI to ask for the records — an assertion he disagrees with — it would prohibit the telecommunication companies from handing them over.

Meanwhile, the refusal to provide to McClatchy a copy of the memo is noteworthy because the Obama administration — in particular the OLC — has sought to portray itself as more open than the Bush administration. The decision not to release the memo means the details of the Justice Department's legal arguments in support of the FBI's controversial and discredited efforts to obtain telephone records will be kept from the public.

For years, the Bush administration had refused to release the memos that provided the legal underpinning for harsh interrogations of overseas terror suspects, citing national security, attorney-client privilege and the need to protect the government's deliberative process.

In April 2009, the Obama administration released four of the Bush-era memos that detailed many of the controversial interrogation methods secretly authorized by the Bush administration — from waterboarding to confining prisoners in boxes with insects.

Experts who track government spying and the Freedom of Information Act said the refusal to release the FBI memo to McClatchy appears to be improper and contrary to the intent of FOIA. Since the memo appears to be exclusively on the OLC's legal justification for getting the phone records, the Justice Department should be able to release at least portions of it, experts said.

"It's wrong that they're withholding a legal rationale that has to do with the authorities of the FBI to collect information that affects the rights of American citizens here and abroad," said Michael German, a former FBI agent of 16 years who now works for the American Civil Liberties Union. "The law should never be secret. We

should all understand what rules we're operating under and particularly when it comes to an agency that has a long history of abuse in its collection activities."

Sens. Richard Durbin (D-IL) and Ron Wyden (D-OR) demanded more than a year ago that Attorney General Eric Holder release a copy of the memo. The Justice Department has responded, Wyden said, but he declined to elaborate on the exchange.

"I do think the level of secrecy that surrounds the executive branch's interpretation of important surveillance law is a serious problem," he said, "and I am continuing to press the executive branch to disclose more information to the public about what their government thinks the law means."

When President Obama authorized the release of the interrogation memos, he said at the time that he was compelled to release them in part because of an open records lawsuit by the ACLU.

"While I believe strongly in transparency and accountability, I also believe that in a dangerous world, the United States must sometimes carry out intelligence operations and protect information that is classified for purposes of national security," he said.

Obama said he'd concluded the documents could be released because they wouldn't jeopardize national security and because the interrogation techniques described in the memos had been widely reported. By then, the practices were no longer in use.

The FBI's activities discussed in the most recent and still secret OLC memo also have been widely publicized. An inspector general report that revealed the existence of the FBI memo was one in a series on the FBI's informal handling of telephone records and it concluded the bureau had committed egregious violations of the law.

When revealing the existence of the OLC memo, the inspector general described it as having "significant policy implications that need to be considered by the FBI, the Department, and the Congress."

Since 2006, it appears the bureau has refrained from using the authority it continues to assert, according to another heavily redacted section of the inspector general's report. "However, that could change, and we believe appropriate controls on such authority should be considered now, in light of the FBI's past practices and the OLC opinion," the inspector general warned. Reported in: McClatchy Newspapers, February 11. □

intellectual freedom bibliography

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