newsletter on intellectual freedom

IFC ALA

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Freedom Act limits NSA phone surveillance

In a significant scaling back of national security policy formed after the September 11, 2001, terrorist attacks, the Senate on June 2 approved legislation curtailing the federal government's sweeping surveillance of American phone records, and President Obama signed the measure hours later.

The passage of the bill—achieved over the fierce opposition of the Senate majority leader—will allow the government to restart surveillance operations, but with new restrictions.

The legislation signaled a cultural turning point for the nation, almost 14 years after the September 11 attacks heralded the construction of a powerful national security apparatus. The shift against the security state began with the revelations by Edward J. Snowden, a former National Security Agency contractor, about the bulk collection of phone records. The backlash was aided by the growth of interconnected communication networks run by companies that have felt manhandled by government prying. The storage of those records now shifts to the phone companies, and the government must petition a special federal court for permission to search them.

Even with the congressional action, the government will continue to maintain robust surveillance power, an authority highlighted by Senator Rand Paul, Republican of Kentucky, whose opposition to the phone records program forced it to be shut down at 12:01 a.m. June 1. Paul and other critics of the legislation said the government's reach into individuals' lives remained too intrusive.

The bill cleared the Senate 67 to 32 after a fierce floor fight; at least four of the opponents voted no because they felt the bill did not go far enough. President Obama was quick to praise passage of the legislation and to scold those who opposed it.

"After a needless delay and inexcusable lapse in important national security authorities, my administration will work expeditiously to ensure our national security professionals again have the full set of vital tools they need to continue protecting the country," Obama said. "Just as important, enactment of this legislation will strengthen civil liberty safeguards and provide greater public confidence in these programs."

The Senate's longest-serving member, Patrick J. Leahy, the seven-term Democrat of Vermont, said the legislation, which he co-sponsored, represented "the most significant surveillance reform in decades."

(continued on page 121)

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in this issue

targets of the censor

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ALA co-founds major new coalition to recalibrate copyright

On April 28, the American Library Association joined nine fellow founding national groups from both the private and public sectors to unveil Re:Create, a new copyright coalition formed to articulate and fight for the perspectives and rights of library users, educators, innovators and creators of every kind.

Librarians know that copyright has a broad purpose—to advance learning and creativity for all people—but, too often, policy and law makers focus on the needs and interests of entertainment companies and other industry players who are determined to preserve old business models through enforcement rather than by innovating in the new economy. An important purpose of Re:Create is to ensure that the copyright debate respects and reflects the full range of legitimate views and needs of every part of our economy and society.

As ALA President Courtney Young said in Re:Create's inaugural press release: "The Supreme Court has held that the primary objective of copyright is to 'promote the Progress of Science and useful Arts.' We must be careful that efforts to reduce copyright infringement do not prevent legitimate uses, free expression, new innovations, or bring unnecessary harm to the public."

Re:Create is composed of both longtime ALA allies in seeking a copyright system that both incentivizes creativity and maximizes public access to information, and new groups from across the policy and political spectrum. Expected to significantly expand its membership in the coming months, the new group will benefit from ALA's long experience and grassroots commitment to balanced copyright law and policy. Re:Create also will help amplify ALA's own positions and messages in this critical sphere more forcefully and effectively. Today's launch comes just as Congress is poised to conclude a multi-year review of America's copyright law and to consider potential legislative changes to it.

Much as it was almost exactly 20 years ago, before the World Intellectual Property Organization (WIPO) Copyright Treaty that gave rise to the Digital Millennium Copyright Act (DMCA) had yet been drafted, copyright is again on the front burner in Congress . . . and it's about to get very hot. Congress must take care not to heed those who mistakenly believe that ever more restrictive copyright laws necessarily are better copyright laws.

ALA thus was delighted to co-found and launch Re:Create at this critical time—to help copyright reflect its true constitutional purpose to "promote progress in science and the useful arts." Make no mistake, certain aspects of copyright in the digital age have gone awry. Perhaps most egregiously, statutory damages for copyright infringement vastly exceed remedies in other laws and the current length of copyright (life plus 70 years, or 95 years for corporations) has no public interest justification.

ALA's most fundamental view of copyright is simple and clear: libraries, library users and the general public are entitled to be treated fairly, reasonably and as the Framers of the Constitution intended. Libraries' annual investment of more than $4 billion in copyrighted works partly justifies that conviction, but library users and the public at large have important rights, too. Making sure those rights don't get short shrift under copyright law benefits us all. Study after study now has shown that the flexibility accorded by fair use and other access-friendly provisions of the copyright law enable discoverability, creativity and innovation. They are, without exaggeration, engines of our economy, our society and—truly—our democracy.

That is perhaps the most fundamental and universal message that ALA and the other members of Re:Create have come together to convince Congress and other policy makers to design into whatever new fabric of copyright law may next be woven. The coalition's members are diverse, but all are committed to promoting: an open Internet; creativity and innovation; robust copyright limitations, exceptions and safe harbors; and curbing copyright enforcement measures that threaten free expression.

ALA also will continue to work with and through the Library Copyright Alliance (LCA), the coalition that works on behalf of libraries and library users. LCA, with its able counsel Jonathan Band, has made many important contributions to the interests of the library community during the past years. Re:Create will help leverage ALA's work in LCA.

In addition to ALA, the Re:Create coalition members include: the Association of Research Libraries (ARL), Center for Democracy & Technology (CDT), Computer and Communications Industry Association (CCIA), Consumer Electronics Association, Electronic Frontier Foundation (EFF), Media Democracy Fund, New America's Open Technology Institute (OTI), Public Knowledge (PK), and the R Street Institute. Reported in: ALA Washington Office "District Dispatches," April 28. □

freedom of the press 2015: harsh laws and violence drive global decline

Conditions for the media deteriorated sharply in 2014 to reach their lowest point in more than ten years, as journalists around the world encountered more restrictions from governments, militants, criminals, and media owners, according to Freedom of the Press 2015, released April 28 by Freedom House.

"Journalists faced intensified pressure from all sides in 2014," said Jennifer Dunham, project manager of the report. "Governments used security or antiterrorism laws as a pretext to silence critical voices; militant groups and

criminal gangs used increasingly brazen tactics to intimidate journalists, and media owners attempted to manipulate news content to serve their political or business interests."

The report found that the main factors driving the decline were the passage and use of restrictive laws against the media—often on national security grounds—and limits on the ability of local and foreign journalists to report freely within a given country, or even to reach it. In a time of seemingly unlimited access to information and new methods of content delivery, more and more areas of the world are becoming virtually inaccessible to journalists.

"One of the most troubling developments of the past year was the struggle by democratic states to cope with an onslaught of propaganda from authoritarian regimes and militant groups," Dunham said. "There is a danger that instead of encouraging honest, objective journalism and freedom of information as the proper antidote, democracies will resort to censorship or propaganda of their own."

Key Global Findings

- Global press freedom declined in 2014 to its lowest point in more than 10 years. The rate of decline also accelerated, with the global average score suffering its largest one-year drop in a decade.
- Of the 199 countries and territories assessed during 2014, a total of 63 (32 percent) were rated Free, 71 (36 percent) Partly Free, and 65 (32 percent) Not Free.
- Only one in seven—about 14 percent—of the world's inhabitants live in countries with a Free press.
- All regions except sub-Saharan Africa, whose average score improved slightly, showed declines. Eurasia suffered the largest drop.
- Several countries with histories of more democratic practices have experienced serious deterioration over the past five years. Greece has fallen by 21 points on a 100-point scale since 2010, as existing structural problems were exacerbated by the economic crisis and related political pressures. Large five-year drops were also recorded in Thailand (13 points), Ecuador (12), Turkey (11), Hong Kong (9), Honduras (7), Hungary (7), and Serbia (7).
- The world's 10 worst-rated countries and territories were Belarus, Crimea, Cuba, Equatorial Guinea, Eritrea, Iran, North Korea, Syria, Turkmenistan, and Uzbekistan. The Russian-occupied territory of Crimea was assessed separately for the first time in this edition.

Key Regional Findings

Americas

- In Latin America, meaning the Spanish- and Portuguese-speaking parts of the region, only three (15 percent) of the countries were rated Free, and just 2 percent of the population lived in Free media environments.
- Honduras, Peru, and Venezuela experienced significant declines.
- Mexico, already suffering from endemic violence, received its lowest score in over a decade, after the passage of a controversial new telecommunications law.
- In Ecuador, hostile rhetoric from the government, combined with pervasive legal harassment of journalists and media outlets, led to a two-point decline.
- The United States' score fell by one point due to detentions, harassment, and rough treatment of journalists by police during protests in Ferguson, Missouri.

Asia-Pacific

- Only 5 percent of the region's population had access to Free media in 2014.
- China's score was its worst since the 1990s, as authorities tightened control over liberal media outlets and alternative channels of news dissemination.
- Press freedom deteriorated sharply in Hong Kong due to a surge in violent attacks against journalists and pressure on companies to pull advertising from outlets that were critical of Beijing.
- Thailand's press freedom score dropped significantly in the wake of the military coup and the imposition of martial law.

Eurasia

- The overwhelming majority of people in the region (82 percent) lived in Not Free media environments.
- Russia's government tightened its grip on the media, suppressing independent reporting and deploying state-controlled outlets to attack domestic dissent and perceived foreign adversaries.
- Ukraine was upgraded to Partly Free as the fall of President Viktor Yanukovych's government led to decreases in political pressure on state media and less hostility toward independent voices.
- In Azerbaijan, the government unleashed a major crackdown on independent media, employing threats, raids, restrictive laws, and trumped-up criminal charges.

Europe

- This region enjoys the highest level of press freedom, although the regional average score has registered the world's second-largest net decline over the past 10 years.

- Norway and Sweden were rated the world's top-performing countries.
- Turkey's media environment deteriorated further as the government moved more aggressively to close the space for dissent through new legal measures and intimidation.
- Notable declines also took place in Greece, Serbia, and Iceland.
- In Hungary, which remains Partly Free, the administration of Prime Minister Viktor Orbán continued to exert pressure on media owners to influence coverage.

Middle East and North Africa

- Only 2 percent of the region's people lived in Free media environments, while the vast majority, 93 percent, lived in Not Free countries or territories.
- Backsliding occurred in Algeria, which fell into the Not Free category, as well as in Egypt, Iraq, and Libya.
- Press freedom declined further in Syria, where the brutal civil war posed enormous dangers for journalists.
- Tunisia registered the best score of any Arab country in over a decade.

Sub-Saharan Africa

- The majority of people in the region (58 percent) lived in countries with Partly Free media.
- Guinea-Bissau and Madagascar improved to Partly Free.
- South Africa suffered a decline due to increased use of the apartheid-era National Key Points Act and other laws against the media, as well as an increase in violence against journalists.
- In Nigeria, little reporting was possible from areas controlled by Boko Haram, and the military increased efforts to punish critical coverage of its operations.
- Ethiopian authorities stepped up arrests of independent journalists, including the Zone 9 bloggers.

Reported in: freedomhouse.org □

James G. Neal and Jonathan Bloom win 2015 FTRF Roll of Honor awards

Jonathan Bloom and James G. Neal are the recipients of the 2015 Freedom to Read Foundation (FTRF) Roll of Honor Awards, presented by the Freedom to Read Foundation. The award was presented at the 2015 American Library Association Annual Conference during its Opening General Session on June 26 in San Francisco.

Jonathan Bloom, counsel to Weil, Gotshal & Manges LLP in their New York office and a former trustee of the Freedom to Read Foundation, specializes in media and First Amendment and intellectual property law. His practice includes counseling and litigation on behalf of news organizations, the Association of American Publishers Inc. (for which he acts as counsel to the Freedom to Read Committee), individual book publishers, entertainment companies, Internet service providers, and other clients in the areas of copyright, trademark infringement, misappropriation, defamation, and a wide range of First Amendment and related issues.

He has written *amicus* briefs advocating First Amendment rights on behalf of the Association of American Publishers and other media and free-speech organizations, including the Freedom to Read Foundation, in appeals involving Son of Sam laws, prior restraint, the application of consumer protection law to dietary advice publications, and defamation claims against works of satire and fiction. He has written or co-written *amicus* briefs in several Supreme Court First Amendment cases, including *Reno v. ACLU*, *Ashcroft v. Free Speech Coalition*, *United States v. American Library Association*, *United States v. Stevens*, and *United States v. Alvarez*.

Bloom's published articles address subjects such as First Amendment public forum analysis, food libel laws, publicity rights, the interplay of copyright law and technology, keyword advertising litigation, and the Digital Millennium Copyright Act. Since 1998 he has served as executive editor of *Bright Ideas*, the newsletter of the Intellectual Property Law Section of the New York State Bar Association, and is a member of the section's executive committee.

"I am very pleased to announce Jonathan Bloom as this year's Roll of Honor co-awardee," said Roll of Honor Committee Chair Robert P. Doyle. "Jonathan's stellar defense of the First Amendment makes him a natural addition to this premier list of First Amendment advocates. His work has helped forge strong and lasting bonds within the American book community—the creators, publishers, and disseminators of the printed word—in defense of the First Amendment."

James G. Neal, recently retired vice president for information services and university librarian at Columbia University, is a key leader in the library community as an advocate for intellectual freedom and the role of libraries in First Amendment and freedom of information issues. At Columbia, he focused on the development of the digital library, special collections, global resources, instructional technology, library facility construction and renovation, electronic scholarship, and fundraising programs. Previously, he served as the dean of university libraries at Indiana University and Johns Hopkins University, and held administrative positions in the libraries at Penn State University,

University of Notre Dame, and the City University of New York.

Neal serves on the council and executive board of the American Library Association (ALA). He has served on the board and as president of the Association of Research Libraries, on the board and as chair of the Research Libraries Group, and on the board and as chair of the National Information Standards Organization. He is on the boards of the Freedom to Read Foundation, the Digital Preservation Network, Columbia University Press, and is a member of the OCLC board of trustees. He also has participated on numerous international, national, and state professional committees, and is an active member of the International Federation of Library Associations and Institutions.

He has represented the American library community in testimony on copyright matters before Congressional committees, was an advisor to the U.S. delegation at the World Intellectual Property Organization (WIPO) diplomatic conference on copyright, has worked on copyright policy and advisory groups for universities and for professional and higher education associations, and during 2005-08 was a member of the U.S. Copyright Office Section 108 Study Group.

Neal was selected as the 1997 Academic Librarian of the Year by the Association of College and Research Libraries and was the 2007 recipient of ALA's Hugh Atkinson Memorial Award. In 2009 he received the ALA Melvil Dewey Medal Award and this year he will be awarded ALA's Joseph W. Lippincott Award for "distinguished service to the profession of librarianship." In 2010, he received the honorary Doctor of Laws degree from the University of Alberta.

"I am equally pleased to announce James G. Neal will be joining the Foundation's Roll of Honor," said Doyle. "Jim is a natural leader—thoughtful, effective, and dedicated to the Foundation's mission. As a board member and treasurer, he has increased FTRF's membership, guided the organization in establishing sound policies and procedures, and represented the Foundation in numerous public forums with his wit and clear articulation of First Amendment principles."

The Freedom to Read Foundation Roll of Honor was established in 1987 to recognize and honor those individuals who have contributed substantially through adherence to its principles and/or substantial monetary support. Founded in 1969 to promote and defend the right of individuals to freely express ideas and to access information in libraries and elsewhere, FTRF fulfills its mission through grants to individuals and groups, primarily for the purpose of aiding them in litigation, and through direct participation in litigation dealing with freedom of speech and of the press. Reported in: ALA press release, May 12. □

censorship dateline

citing "the impact of racist images and perpetuating harmful narratives." Chapters withdrew the book but quickly returned it to store shelves after determining it didn't violate company policy, which states only three reasons why a book can be removed: child pornography, instructions on how to build weapons of mass destruction, or "anything written with the sole intent of inciting society toward the annihilation of one group."

University of Manitoba professor Niigaan Sinclair, who teaches a course on graphic novels, said that while the book should not be banned, it isn't a book that children should read before they are provided with the proper context.

"The problem is when you show Indians carrying weapons coming out of the 15th, 16th centuries always invested in violence, deficiency, and loss, then [children] think that is what First Nations culture is," he told CBC News. "When they see a First Nations person riding the bus, going to a job, they can't conceive the reconcilability of those two things." Reported in: comicbookresources.com, June 18.

libraries

Winnipeg, Canada

The Winnipeg Public Library is returning Herge's *Tintin in America* to its shelves—but in the adult graphic novel section, not the children's area.

The book was pulled for review in March following news that the Chapters bookstore in Winnipeg had briefly removed copies from its shelves due to a complaint about the portrayal of Native Americans. An email sent to all library branches at that time reveals *Tintin in America* wasn't supposed to be on the shelves in the first place.

"The decision to withdraw this title was originally made in 2006 after several patron complaints about the content being offensive," the email stated. "The complaints were reviewed by the Youth Services Librarians at the time and the decision was made to remove it from the public collections based on overtly stereotypical and racist depictions of indigenous people."

As a result of the 2006 review, both *Tintin in America* and *Tintin in the Congo* were moved to a special research collection. That collection was removed in 2013, but the book was re-ordered and returned to the general collection last year—"in error," according to a library spokesperson. This week's decision restores the book to general circulation, but to the adult collection, where it will be available to adult readers who want to see it for themselves or "carry on discussions with their children or others."

In the book, serialized from September 1931 to October 1932, Tintin pursues a gangster from Chicago to a western town, "Redskin City," where they are held captive by members of the Blackfoot tribe. In March, First Nations educator Tasha Spillett asked Chapters to stop selling the book,

Granbury, Texas

More than 50 residents have signed "challenge forms" at the Hood County Library after a parent raised concerns about two books focused on LGBT issues in the children's section.

My Princess Boy and *This Day in June* are both aimed at helping children understand the lesbian, gay, bisexual and transgender community, according to library director Courtney Kincaid.

"The books have color drawings and have some rhymes," Kincaid said. "Lesbians and gays are in this community, and they deserve to have some items in this collection."

But not everyone feels that way. The challenge forms are filled with comments questioning why the books are in the children's section. Other submitters indicate the books should be banned outright because they promote "perversion" and the "gay lifestyle."

Hood County librarian Courtney Kincaid defends the inclusion of two children's books aimed at helping children have a better understanding of LGBT issues.

Granbury City Council member Rose Myers said she was approached by a constituent a few weeks ago who raised concerns about the placement of the books. She said in a statement: "My decision to sign a protest regarding the book *My Princess Boy* was clearly based on the fact that if the library would not move the books and keep them in an appropriate location, then they should be removed [...] Can a four year old understand the content of this book without the help of an adult? In my opinion, No!"

Both of the stories feature large, colorful drawings coupled with simple rhymes and sentences. In other public libraries, like Fort Worth, they are shelved in the children's

area. Kincaid said the challenges were presented to the Hood County Library Advisory Board, and the board voted to keep both copies in the library.

She has agreed to move *This Day in June* to a nonfiction section because it can be seen as a "teaching tool."

Hood County Commissioners, who oversee the library, were expected to address the issue at a July meeting—although it wasn't clear if they will simply hear public comment, or actually vote to either keep or remove the books.

The controversy comes at the same time as Hood County clerk Katie Lang has come under scrutiny for refusing to personally sign off on same-sex marriage licenses. On June 30, the clerk's office reversed course and said it would issue licenses without involving Lang. Reported in: wfaa.com, July 1.

schools

South Windsor, Connecticut

A high school English teacher has resigned in the wake of a controversy after he shared a sexually-explicit poem with students earlier this year. According to a statement from the South Windsor school district, David Olio, who taught at South Windsor High School, has resigned, effective at the end of the 2015-16 school year. He will be on paid administrative leave until then. The resignation was a mutual decision reached by Superintendent Kate Carter, the South Windsor Education Association and Olio, according to the statement.

"Mr. Olio and the other parties have reached this agreement because they do not want to further distract parents, students or staff from their important work of teaching and learning," the statement said.

Olio shared the poem "Please Master" by Allen Ginsberg during his third-period AP English class on February 25, according to a letter sent to him from Carter, dated March 20. He was subsequently suspended.

"The content of the poem is wholly inappropriate for a high school classroom, and it was irresponsible for you to present this poem to children under your charge," Carter wrote. "Some of your students are minors, and you gave neither the students nor their parents any choice whether they wished to be subjected to the sexual and violent content of this poem."

Carter also wrote that several students reported being emotionally upset after hearing the poem.

The letter was sent after the school district's assistant superintendent of personnel and administration, Colin McNamara, conducted a review. According to the letter, Olio had asked students in the class if they wanted to share any poems. One student brought a copy of the poem to Olio, who reviewed it twice before he decided to share the poem with the class, the letter said. Some students protested before he read the poem.

Olio also signed into YouTube so he could access a video of the author reading the poem, which was age-restricted content, Carter wrote. Carter also wrote that Olio's decision was made without consulting with other teachers or school administration. After sharing the poem, Olio attempted to start conversation with the classroom about it, the letter said.

"This breach in student and parent trust caused a major disruption to the learning environment and this disruption continues to persist at the school and district level," Carter wrote. She also wrote in the letter that Olio did not demonstrate a full understanding of the inappropriateness of his decision to share the poem. Reported in: *Hartford Courant*, May 19.

Coeur d'Alene, Idaho

Mary Jo Finney thinks one of the novels Coeur d'Alene high school students read is unworthy of its standing as an American classic. "The story is neither a quality story nor a page turner," Finney said of John Steinbeck's *Of Mice and Men*.

Finney and three other members of a district curriculum-review committee have recommended *Of Mice and Men* be pulled from classroom instruction and made available only on a voluntary, small-group basis in ninth grade English classes. The school board will vote on the recommendation.

Its use of profanity—"bastard," for instance, and "God damn"—makes the 1937 book unsuitable for freshmen, said Finney, a parent who has objected to other books from the Coeur d'Alene School District curriculum over the years. She said she counted 102 profanities in its 110 pages, noting that "the teachers actually had the audacity to have students read these profanities out loud in class."

In addition to the profanity, the curriculum committee found the story of two migrant ranch hands struggling during the Great Depression too "negative."

The book is of high literary quality, committee member Eugene Marano said, and he's not so bothered by the coarse language. But the gloomy tone gives him pause, especially the bleak ending. "I thought it was too dark for ninth graders," said Marano, a retired Kootenai County magistrate judge. "It needs to be in a small group to explain away the dark part of it."

Steinbeck's novella is one of the most challenged books of the past century, according to the American Library Association. It's also one of the best known works of the Nobel Prize- and Pulitzer Prize-winning author and has been adapted often for stage and screen.

"It always disappoints me when a school tries to take something away like that," Coeur d'Alene City Librarian Bette Ammon said. The words Steinbeck chose accurately portrayed how the characters of that time and place would have spoken to each other, Ammon said.

"I just think that any book that is considered a classic and potentially could be something that informs your life past schooling, it's unfortunate if people don't get a chance to read it," she said.

School Board Trustee Dave Eubanks, a non-voting member of the curriculum committee, said he thinks reclassifying *Of Mice and Men* as an optional read for freshmen is a reasonable compromise. "Nobody's banning books or burning books," he said. "There was just too darn much cussing. It was on almost every single page of the novella."

The language was common in the 1930s among homeless people and migrant workers and is not particularly shocking today, Eubanks said. "We're not talking about the f-word or anything like that," he said. But the repetition of profanity made several committee members uncomfortable.

"We have a lot of families in our community, moms and dad, who are trying to raise their children with traditional family values and traditional religious values. . . . I don't think we should be undermining them," Eubanks said.

The committee is reviewing about 50 titles used in English classes in grades 6 through 12 to make sure they're relevant to student needs under the new Idaho Common Core standards. *Of Mice and Men* is among eleven titles teachers may choose from, and it's a popular choice due to its length. In addition, juniors read Steinbeck's most acclaimed work, *The Grapes of Wrath*.

School Board Chair Christa Hazel said she opposes limiting student access to *Of Mice and Men*. "It's been taught for many years without an issue in this district," Hazel said. "We've had no parents really complaining about it."

She also pointed out that the district already asks families to approve of their kids participating in classes with controversial material. Families that don't consent are offered alternative material. "I trust that those policies in place are adequate protection," Hazel said. "I also believe we need to trust the professional judgment of our teachers."

Eubanks said, "We do want our kids to read Steinbeck," whom he called a titan of American literature. "It was just decided that that particular book probably should not be required reading of ninth graders as it is right now." Reported in: *Spokane Spokesman-Review*, May 4.

Oxon Hill, Maryland

For some students at Oxon Hill High School, the art display that sat in the rotunda for much of May was cathartic, an embodiment of the angst and anger they felt when police violence made national headlines.

"Young black males: the new endangered species," read a placard near the display, which sat atop the school seal set in the rotunda's floor. Next to it was a cutout painted to look like a police officer with white skin reading a newspaper with obituaries of black men killed by law enforcement officers. There was another silhouette, this one painted black, of a person with hands raised wearing a T-shirt with holes in it. Red streaked from the holes, forming the stripes of an upside-down American flag.

On social media, the display was criticized as "reverse racism," "horrible," "propaganda," and even a reason to call for principals, teachers and administrators to be fired.

In June, about a day after a photo of the artwork surfaced on Facebook, where it was pilloried by commenters, officials decided to dismantle the display ahead of schedule, heeding critics' calls to take it down.

Keesha Bullock, spokeswoman for Prince George's County Public Schools, said the decision was made to protect students, not to censor them. "There were a number of disparaging comments that started to come up," Bullock said. "The last thing that we wanted was for them to be in the middle of a media firestorm."

But the move stirred outrage among students, who installed a new display: Two coffins, surrounded by a sprinkling of flower petals, with headstones that read, "HERE LIES OUR FREEDOM OF SPEECH" and "HERE LIES OUR FREEDOM OF EXPRESSION." They tweeted with the hashtag #donttakeitdown and collected nearly 1,500 signatures on a petition demanding a statement of solidarity from the school board.

The coffins were soon dismantled, too, Bullock said, because they were not authorized.

The conflict raises questions about how schools should handle sensitive topics, particularly surrounding issues such as police use of force. Some of the police shootings and arrests grabbing national headlines have involved young, unarmed black men not much older than the students who walk the hallways of Oxon Hill High, where the majority of the student body is black.

Police violence is a topic that has come up in the school's classrooms and hallways. Myles Loftin, a rising senior and the photo editor at the school newspaper, said the journalism class hosted forums on controversial topics, including police brutality, rape culture and feminism.

Kiana Harris, a 17-year-old who graduated in May, said the display reflected a frightening reality that students face in their daily lives.

"It's simply stating facts, and the same stuff could be found on the news," Kiana said. "It really just made me think about all of the deaths that are happening, and the police are killing people who are unarmed."

Jules Gomes said the display resonated with him because he had an unnerving encounter last summer with a Metro Transit Police officer who he says appeared to size him up and asked him when he had gotten out of jail. It made him more cautious around law enforcement.

"I connected to [the display]. I really liked it," said Jules, 17, who is black. "I was actually proud, like, hey, we're not just known for football . . . we're doing something that impacts society."

Some law enforcement officials criticized the display, saying it could stoke hatred of police. "To say the display

was distasteful would be an understatement," Dean Jones, president of the local chapter of the Fraternal Order of Police, said in a statement posted on the union's Facebook page. "In a time when relationships between law enforcement and certain communities are strained, this display does nothing to repair relationships."

If the goal of the removal was to avoid media scrutiny, it was already too late. Conservative news sites the Daily Caller and Breitbart ran stories. The latter declared the art display "#blacklivesmatters indoctrination." Fox 5 broke the story with news that the display had been taken down.

Board of Education member Edward Burroughs III, who represents the Oxon Hill area, said he was deeply disappointed with the decision to remove the artwork. If officials did it to protect students from scrutiny, he said, they are underestimating the teenagers.

"Mind you, this turned into the media blitz that the administration feared, and the students persevered," Burroughs said.

At a board meeting, after a handful of students spoke out against the decision to take down the display, Burroughs made a motion for a "statement in solidarity" of the student's art and their freedom of expression. It passed unanimously.

"This art piece was simply an expression of the way they see the world," said Burroughs, who has faced calls to resign over his support of the students on the issue. "I think suppressing that free speech is not the solution." Reported in: *Washington Post*, June 18.

New York, New York

Italian-American advocates want Schools Chancellor Carmen Fariña to ban from reading lists a series of children's books that they say perpetuate negative stereotypes by touting the infamous gangster Al Capone.

Books in the "Tales from Alcatraz" novels written by acclaimed author Gennifer Choldenko are titled *Al Capone Does My Shirts*, *Al Capone Shines My Shoes* and *Al Capone Does My Homework*. Capone was a prisoner at Alcatraz from 1935 to 1939.

"Italian-Americans remain the last ethnic group in New York that it is acceptable to negatively stereotype," John Fratta, chairman of the Italian-American Action Network, wrote in a March 25 letter to Fariña. He went public after the chancellor's office brushed off his written complaint.

The Department of Education confirmed that some principals have Capone on elementary-school and middle-school reading lists.

Al Capone Does My Shirts is a Newberry Honor and ALA Notable Children's book and has received praise and honors from literary magazines across the country," said Department representative Harry Hatfield. "We empower principals to develop reading lists that are appropriate for their students and respect the diversity of their communities." Reported in: *New York Post*, June 15.

Asheville, North Carolina

Buncombe County school board members have delayed a decision on *The Kite Runner* following an objection by former school board member Lisa Baldwin over the public notice for the meeting. The board was set to make a decision June 30 on whether the book by Khaled Hosseini will continue to be part of the system's approved reading list for whole class instruction.

Baldwin had complained about the lack of a paper notice posted outside the meeting room, according to school officials. The board is required to post a notice on a general bulletin board, on the door or at the door.

Information about the meeting was included on the last agenda posted at the door at the last meeting, but the time of the meeting was changed and the notice was not reposted, according to board attorney Dean Shatley.

"The central office staff typically does an amazing job getting the information out to everybody. We're just doing this out of an abundance of caution," Shatley said.

After the meeting, Baldwin said she also objected because information about the meeting was not posted prominently on the school board website.

Use of the book was suspended in the spring after Baldwin filed a complaint about its use in an honors English class at Reynolds High School. Both a Reynolds High committee and a district-wide committee reviewed the book and have recommended its continued use.

On April 27, teacher Brooke Bowman sent a letter to parents explaining the value of the 2003 best-seller as a teaching tool while warning of its mature content.

"A key scene, critical to the plot, involves the rape of one of the principal characters," the letter stated. "Students may choose to skip this scene if they wish. In addition, there is some profanity."

The letter concluded: "However, if you would prefer your child not read this novel, please sign below. We will come up with a comparable alternative."

In her complaint Baldwin, a self-described "conservative government watchdog," cited state law requiring local boards of education to include "character education" in the curriculum. She also said schools must teach sex education from an abstinence-only perspective.

The law in question instructs local school boards to implement, with community input, character education that addresses eight specific traits: courage, good judgment, integrity, kindness, perseverance, respect, responsibility and self-discipline. Baldwin said the main character's actions violate those principles, noting that "Amir, the protagonist, witnesses the rape of his friend and is plagued with lifetime guilt over running away from the scene rather than having the courage, good judgment, integrity, kindness,

perseverance, respect, responsibility and self-discipline needed to help his friend."

But while the law does call for teaching abstinence as "the expected standard for all school-age children" and "the only certain means of avoiding out-of-wedlock pregnancy," it also requires schools to teach "the effectiveness and safety of all FDA-approved contraceptive methods," specifying that "Information conveyed during the instruction shall be objective and based upon scientific research that is peer reviewed and accepted by professionals and credentialed experts in the field of sexual health education."

And in any case, these requirements pertain to "a reproductive health and safety education program commencing in the seventh grade," not a 10th-grade honors English class.

In a May 15 opinion piece published in the *Asheville Citizen-Times*, Baldwin questioned the effectiveness of opt-out forms like the one included in Bowman's letter, noting that a teacher might assume consent on the part of a parent who never actually saw the letter. Offensive material, she maintained, should instead require an opt-in form or permission slip signed before the student is exposed to the content.

Baldwin also wrote that she had "tried to offer a compromise," suggesting that the class instead read the World War I classic *All Quiet on the Western Front* along with appropriate excerpts from *The Kite Runner*, "but the principal rejected it."

In accordance with system policy, *The Kite Runner* remained available in the school library. And in response to the controversy, a group of students actually formed a book club to read and discuss the novel, noted Donald Porter, communications director for the Buncombe County Schools.

But the book had to be barred from classroom use until a final decision was made. And because the school year would be over before the process could play out, the class read *All Quiet on the Western Front*, the alternative text suggested by Baldwin, instead. So whichever way the matter is eventually resolved, this year's 10th-grade honors English class did not get to study *The Kite Runner*. Reported in: *Mountain Express*, June 12; *Asheville Citizen-Times*, June 30.

student press

San Gabriel, California

Outcry over a high school principal's alleged censorship of a student newspaper article about the dismissal of a popular teacher has spread throughout the larger community, despite the district's promises to prevent future First Amendment disputes.

At a packed Alhambra Unified School District board meeting on June 22, students from San Gabriel High School asked the school board for principal Jim Schofield's resignation. Schofield, who has been accused of censoring the article in *The Matador* student newspaper, will assume a new position as the district's director of English language development in July, according to the *Pasadena Star News*.

On June 19, attorneys for the school district announced plans to implement several safeguards for the student press—mandatory student media training for staff members involved with student publications, revised procedures that align with California Education Code 48907, and a publications code for each high school to ensure students and staff are informed of the legal parameters of student expression.

"The district strongly supports the right of students to lawfully exercise their freedom of expression," James Fernow and Jordan Bilbeisi, attorneys for the school district, wrote. Still, they said they found that Schofield did not intend to censor the article.

Their letter was in response to the American Civil Liberties Union of Southern California, which sent a letter to the district on June 2 calling for an investigation into Schofield's actions. The ACLU letter, written by Peter Eliasberg, the legal director of ACLU of Southern California, threatened the district with a lawsuit if it did not address the issue of student censorship.

When San Gabriel High first-year English teacher and speech and debate coach Andrew Nguyen was dismissed in May, student journalists at *The Matador* tried to cover the issue and interview Schofield, who said he couldn't speak to "alleged employee matters" because of privacy policies.

Schofield then asked to pre-approve the article, saying that the article must only be a positive feature about Nguyen without specifics of his dismissal. The students published the pre-approved feature about Nguyen's departure on *The Matador*'s website, along with a short editorial alerting readers that the coverage had been censored.

Frank LoMonte, the Student Press Law Center's executive director, said the district's investigation was "completely inadequate" since it didn't include interviews with student journalists or their adviser.

"It's unsurprising that people accused of breaking the law don't admit it," he said. "Had the board done a genuine and thorough investigation, they would have found that Mr. Schofield did not merely issue a cautionary opinion but issued a direct and unequivocal order, which he claimed to be conveying from the superintendent, forbidding the discussion of Mr. Nguyen's removal—an order he had no legal authority to give. It's incumbent on the board to go back to the drawing board and conduct a genuine investigation that includes talking to more than just the accused wrongdoers."

In a written statement on June 19, Schofield said he had been concerned with Nguyen's "constitutional right to privacy," saying that an article by *The Matador* would violate Nguyen's privacy if published. Once Schofield saw the article, he fully approved it, according to his statement.

"I now recognize I could have more clearly stated that it was not my intent to censor the article, but only to ensure

the editors understood and took into account Mr. Nguyen's right to privacy," Schofield said in his statement. "I fully recognize and appreciate that students have a right to exercise lawful freedom of expression in school publications."

But students involved in the issue haven't found Schofield's explanation to be genuine. San Gabriel High alumnus David Lam said that the incident does not come as a surprise.

"Of things to note is that this is not an isolated incident," Lam said. "Schofield (and the school board) has a long history of intimidation and censorship."

Some students voiced frustration that Schofield's planned promotion will continue despite the controversy. "To my knowledge, Schofield's promotion was already set in stone before the censorship took place," said Simon Yung, copy editor at *The Matador*. "However, for the board to press on with his promotion in light of his actions towards *The Matador* and especially to Andrew Nguyen is an affront to the constituents of the Alhambra Unified School District."

At the board meeting, several current and past students spoke for over an hour, asking the district for increased transparency. The district has been slow to publish complete meeting minutes, according to the *Pasadena Star News*.

Kyle Qi, who dressed up in a costume in bubble wrap as "Transparency Man," said that the minutes from previous meetings were not substantial enough, and should be freely accessible by members of the public as a video and audio recording. The written minutes contained a highly paraphrased section of the board meeting and were an inaccurate portrayal of the meeting, Qi said.

"If someone in the audience hadn't recorded that meeting, all that would remain of our voices would be the over-simplified minutes," Qi said. "From your perspective, we may as well have not spoken at the last meeting. If people at home read the minutes, they would only have seen the black and white issue of wanting a teacher rehired, not the complete spectrum of the problems plaguing this school district." Reported in: splc.org, June 30.

colleges and universities

Washington, D.C.

A student disciplinary process at George Washington University might not seem like hot news in India, but in late April it was receiving attention in *The Times of India*, *The Hindustan Times* and elsewhere.

The case is being interpreted by some law professors as a move by the university to effectively ban the swastika from the university's campus. And the reason the case is attracting interest in India is that a student who posted a swastika on a fraternity bulletin board was Jewish—and the symbol he posted was not a Nazi one, but something he had picked up on a trip to India to learn more about religions there, including some that used the swastika as a holy symbol for centuries before the Nazis adopted it.

The Nazi swastika was typically black on white, surrounded by red, on a 45-degree angle. Those of Eastern religions typically feature horizontal and vertical lines, sometimes with dots added and different color arrangements.

The dispute at George Washington came as a number of colleges have in the last year responded to swastikas on campuses—sometimes with Jewish students or organizations as the apparent target. A freshman at the University of Missouri at Columbia was arrested last week for a swastika graffiti and anti-Semitic vandalism. Numerous other campuses have reported swastika incidents in the current academic year. Among them: Emory University, the University of California at Davis and Northwestern University.

In those and many other cases, the swastikas were (regardless of what one thinks of hate speech regulations) acts of vandalism, sometimes at Jewish organizations, and so were clearly violations of university rules and/or local laws simply because people don't have the legal right to deface property that is not their own. That was also the case with a series of swastikas at GW this year (before the case of the student who picked up a swastika in India).

Some Jewish organizations have criticized some colleges and universities for not responding strongly enough (in the view of these groups) to swastika vandalism. Nineteen organizations wrote to GW President Stephen Knapp, saying he had not done enough, in March, after the first round of swastikas on campus this year.

Then came the student who returned from India. He put the swastika on the bulletin board of his fraternity (Zeta Beta Tau, a historically Jewish fraternity), and another student saw it and reported the swastika to the university before getting an explanation. As officials investigated, the student (whose name hasn't been revealed) came forward and said that he had been hoping to have a conversation about the symbol and did not intend to offend anyone. He stressed that this was an Indian swastika, not a Nazi one. The student has told people that while in India, he became fascinated by the idea that a symbol that was not one of hate could become so defined by hate, and that he wanted to explore this issue.

The student was suspended and banned from campus and a hearing was held over his actions. He could face expulsion.

Knapp issued a statement after the ZBT swastika incident that two GW law professors say raises serious legal issues for the university.

"A member of Zeta Beta Tau has now admitted posting the swastika, which he says he acquired while traveling in India over spring break. While the student claims his act was not an expression of hatred, the university is referring the matter to the [police] for review by its hate crimes unit," Knapp said. "Since its adoption nearly a century ago as the symbol of the Nazi Party, the swastika has acquired an intrinsically anti-Semitic meaning, and therefore the act

of posting it in a university residence hall is utterly unacceptable. Our entire community should be aware of the swastika's association with genocide perpetrated against the Jewish people and should be concerned about the extremely harmful effects that displaying this symbol has on individuals and on the climate of our entire university community."

John Banzhaf, a law professor at GW who is backing the student but does not represent him, said that many people should be concerned by Knapp making it university policy that the student's intent is irrelevant. Banzhaf said he believed that many swastikas are illegal and a violation of university rules either because they constitute vandalism or are attempts to intimidate Jewish students. But that wasn't the case here.

Under the interpretation outlined by Knapp, Banzhaf said, a student from India with a swastika in his room would be violating the university's rules and could fear suspension or expulsion. Banzhaf also said it was important not to judge actions by their potential to offend, if the meaning was being misconstrued. As an example, he said that if a student or professor used the word "niggardly" and someone thought that person was using the racial slur, the person could be charged with a hateful act—without ever having had that intent—under Knapp's philosophy.

Jonathan Turley, another GW law professor, has written a blog post questioning whether the student who posted the swastika could be seen as having committed a hate crime when he committed no crime, since posting something on a bulletin board is legal.

The Hindu American Foundation is also calling on GW to withdraw the president's statement and to stop seeking to punish the student who posted a swastika from India.

"Contrary to the hateful and violent meaning the swastika has come to take on for many since its misappropriation by the Nazis, the original swastika is an ancient and holy symbol. It is still commonly used at the entrance of Hindu homes, in temples, and on invitations to special occasions such as weddings and other rites of passage. The four limbs of the Hindu swastika have diverse symbolic meanings: the four Vedas (Hindu holy texts); the four stages of life; the four goals of life; the four Yugas (eras); the four seasons; and the four directions. As such, the symbol cannot be dismissed as one of 'intrinsically anti-Semitic meaning,'" said a letter from the foundation to GW.

The letter added: "Furthermore, we are highly concerned with your attempt to expel the student who posted the symbol without any attempt to understand the context of his actions. The consequences of the university's expulsion could very well be a de facto ban on the use of the swastika in any context on campus. As such, Hindu, Buddhist, Jain or Native American students who sought to use the symbol in a religious manner would be unable to do so without facing the risk of punishment. Such consequences violate both federal and D.C. law and call into question your commitment to religious diversity on campus."

A spokesperson for George Washington said via email that the university did not comment on individual cases. But she said it was not true that GW had banned any symbol. "The university has not banned nor is it attempting to ban religious symbols," she said. "Student organizations and individual students are free to examine and to discuss all questions of interest to them and to express opinions publicly and privately. They are free to support causes by orderly means that do not disrupt the regular and essential operation of the institution." Reported in: insidehighered.com, April 27.

College Park, Maryland; Ann Arbor, Michigan

A student organization at the University of Maryland at College Park called off an April screening of *American Sniper* after students complained that the film fuels "anti-Arab and anti-Islamic sentiments" and "helps to proliferate the marginalization of multiple groups and communities."

The decision came as several colleges continue to face similar protests over screenings of the film. At the University of Michigan, such protests led to an initial decision to cancel a showing there. But at Michigan, the senior administration intervened, citing principles of free speech, and the film was screened.

That's not going to be the case at Maryland.

American Sniper was scheduled to be shown in early May at a screening organized by Maryland's Student Entertainment Events, a student group that arranges for films, comedians and musicians to come to campus. After receiving a petition from the members of the university's Muslim Student Association and meeting with concerned students, the group decided to put off the screening. The student group called the decision a postponement but didn't reschedule the event and indicated the film would not be shown this semester.

"SEE is choosing to explore the proactive measures of working with others during the coming months to possibly create an event where students can engage in constructive and moderated dialogues about the controversial topics proposed in the film," Student Entertainment Events (SEE) said in a statement. "SEE supports freedom of expression and hopes to create space for the airing of opposing viewpoints and differing perceptions."

American Sniper tells the story of Chris Kyle, a former Navy SEAL frequently referred to as the deadliest sniper in U.S. history. The author of a best-selling memoir, Kyle was revered by many as a hero and despised by others as a racist. The film based on his memoir was similarly polarizing. Directed by Clint Eastwood and starring Bradley Cooper, *American Sniper* was a box office hit and earned several Academy Award nominations. But some critics decried it as dangerous propaganda.

"*American Sniper* only perpetuates the spread of Islamophobia and is offensive to many Muslims around the world

for good reason," Maryland's Muslim Student Association wrote in its petition. "This movie dehumanizes Muslim individuals, promotes the idea of senseless mass murder and portrays negative and inaccurate stereotypes. Hundreds of thousands of innocent civilians suffered greatly in the Iraq war; innocent people were deposed from their homes, traumatized by war, and lost their spouse, parents and children. This movie serves to do nothing but make a mockery out of such immense pain."

Earlier in April, the University of Michigan's Center for Campus Involvement temporarily canceled a screening of *American Sniper* after more than 200 students signed a letter saying that the movie perpetuates "negative and misleading stereotypes" and creates an unsafe environment for Middle Eastern, North African and Muslim students. The film was to be replaced with a screening of *Paddington*, a family movie based on the popular series of British children's books about a talking bear with a love of marmalade. The university later reversed its decision, with administrators saying "it was a mistake" to cancel the showing.

A petition created by Muslim students at George Mason University urged the university to cancel a planned screening of *American Sniper* there, as well. Similar efforts have taken place at Rensselaer Polytechnic Institute, the University of Missouri at Columbia and the University of Mississippi. At Eastern Michigan University, four students were arrested after climbing on stage during a campus screening to protest the film.

In a statement, the University of Maryland said it will not intervene in what it described as a "student-led decision."

"SEE is a student-run organization comprised of undergraduate students who work alongside advisers in the creation, promotion and operation of campus events," the university stated. "The university is not involved in the decision-making process to determine which films are brought to campus." Reported in: insidehighered.com, April 24.

Minneapolis, Minnesota

"[T]hey can employ not just metaphor, but caricature, which can be harsh. . . Humor, mockery, satire. People don't like to be made fun of. They don't like their views to be made fun of, they don't like their religion to be made fun of. And sometimes they perceive a harsh personal insult where one is not intended, or maybe where one is intended."

That's how Steve Sack, a Pulitzer Prize-winning editorial cartoonist for *The Minneapolis Star-Tribune*, described the political minefield in which cartoonists work during a January 29 panel on free speech and satire at the University of Minnesota, in the aftermath of the *Charlie Hebdo* attack in Paris. Sack's words also foreshadowed a later debate over how the panel was advertised.

When Muslim students complained about posters that promoted the event, the university investigated their concerns and issued a report that questioned the judgment of those who signed off on the posters. And the university sent an email that some interpreted as an order to remove the posters, although the university disputes this.

The discussion raised questions about how colleges and universities should balance their commitments to academic freedom and free speech with the cultural sensitivities of students and others involved in campus life. And like the recent PEN award protests over a planned tribute to *Charlie Hebdo*, it's also a reminder of how controversial the magazine and what it stands for remain, and how the attack continues to reverberate among thinkers across continents.

Like academics on many campuses, professors at Minnesota grappled with how to talk about the mid-January shootings of staff members at the satiric newspaper, known for its in-your-face irreverence to authority of all kinds—including religious. Hoping to provide a space for dialogue, by the end of the month several professors had organized a panel called "Can One Laugh at Everything? Satire and Free Speech After Charlie."

The panel included Sack, who reflected on being a cartoonist, and several Minnesota professors. Anthony Winer, a professor of law, offered a comparative study of free speech laws. Jane E. Kirtley, the Silha Professor of Media Ethics and Law and director of the Center for the Study of Media Ethics and Law, delivered a talk called, "As Welcome as a Bee Sting: Why We Must Protect 'Outrageous' Speech," while William Beeman, professor and chair of anthropology, talked about figurative representations in the Islamic tradition—including lesser-known historical depictions of Muhammad. Most observant Muslims now consider any kind of physical representation of Muhammad off-limits.

Bruno Chaouat, professor and chair of French and Italian, co-organized the panel and spoke on what he perceived as a possible double standard between anti-Semitism and Islamophobia, drawing parallels between violent Islamic extremism and Nazism (much of Chaouat's work centers on the Holocaust). Another organizer, Riv-Ellen Prell, a professor and chair of American studies and director of the Center for Jewish Studies, introduced the panel. The event was cosponsored by 12 academic units in the College of Liberal Arts.

The organizers advertised the panel with a flyer featuring the cover of the *Charlie Hebdo* edition published immediately after the terrorist attack. In contrast to the magazine's earlier, at times vulgar depictions of the prophet, the cover shows a bearded man with a turban—almost certainly intended to be but not explicitly labeled as Muhammad—shedding a single tear. The headline is "Tout est pardonné," or "All is forgiven," and the man is holding a sign that says, "Je Suis Charlie," or "I Am Charlie," a popular pro-magazine protest phrase following the attack. Over the image, the

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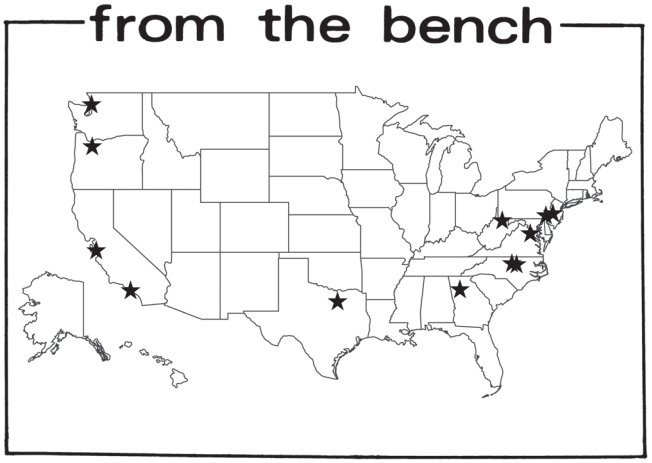


U.S. Supreme Court

The Supreme Court on June 1 made it harder to prosecute people for threats made on Facebook and other social media, reversing the conviction of a Pennsylvania man who directed brutally violent language against his estranged wife.

Chief Justice John G. Roberts Jr., writing for the majority, said prosecutors must do more than prove that reasonable people would view statements as threats. The defendant's state of mind matters, the chief justice wrote, though he declined to say just where the legal line is drawn.

Chief Justice Roberts wrote for seven justices, grounding his opinion in criminal-law principles concerning intent rather than the First Amendment's protection of free speech. The majority opinion was modest, even cryptic.

Justice Samuel A. Alito Jr. voted with the majority, though he said a defendant's recklessness in making threatening statements should suffice to require a conviction. The majority opinion took no position on that possibility. "Attorneys and judges are left to guess," Justice Alito wrote.

Justice Clarence Thomas issued a similar criticism in his dissent. "Our job is to decide questions, not create them," he wrote. "Given the majority's ostensible concern for protecting innocent actors, one would have expected it to announce a clear rule—any clear rule. Its failure to do so reveals the fractured foundation upon which today's decision rests."

The case concerned Anthony Elonis, a Pennsylvania man who had adopted the rap persona Tone Dougie and posted long tirades in the form of rap lyrics on Facebook. Chief Justice Roberts called his statements "crude, degrading and violent."

Elonis wrote that he would like to see a Halloween costume that included his wife's "head on a stick." He talked about "making a name for myself" with a school shooting, saying, "Hell hath no fury like a crazy man in a kindergarten class." He fantasized about killing an FBI agent. "Pull my knife, flick my wrist, and slit her throat," he wrote.

Some of the posts contained disclaimers or indications that they aspired to be art or therapy. At Elonis's trial, his estranged wife testified that she understood the posts as threats. "I felt like I was being stalked," she said. "I felt extremely afraid for mine and my children's and my family's lives."

Elonis was convicted under a federal law that makes it a crime to communicate "any threat to injure the person of another." He was sentenced to 44 months.

The Supreme Court has said that "true threats" are not protected by the First Amendment, but what counts as such a threat has not been especially clear. The question for the justices in the case, *Elonis v. United States*, was whether prosecutors had done enough to prove Elonis's intent. Prosecutors had argued that the words and their context were enough, saying people should be held accountable "for the ordinary and natural meaning of the words that they say in context."

Elonis's lawyers said more was required. Ideally, they said, prosecutors should have to prove that the speaker's purpose was to threaten someone. Failing that, they said, prosecutors should at least have to prove that the speaker knew that it was virtually certain that someone would feel threatened.

The trial judge disagreed. All prosecutors had to prove, the judge said, was that Elonis "intentionally made the communication, not that he intended to make a threat." It was enough, the judge said, that a "reasonable person" would foresee that others would view statements "as a serious expression of an intention to inflict bodily injury or take the life of an individual."

"This is distinguished," the judge said, "from idle or careless talk, exaggeration, something said in a joking manner or an outburst of transitory anger."

The appeals court agreed. But Chief Justice Roberts said a criminal conviction requires more than consideration of how the posts would be understood by a reasonable person (the legal standard lawyers call "negligence"). Rather, he said, prosecutors had to prove that Elonis was aware of his wrongdoing.

The law barring threats, Chief Justice Roberts wrote, "is satisfied if the defendant transmits a communication for the purpose of issuing a threat, or with knowledge that the communication will be viewed as a threat." Saying the parties had not argued the point, he declined to say "whether recklessness suffices."

Justice Alito wrote that recklessness in the sense of consciously disregarding the risk that a statement will be interpreted as a threat should be enough. "We are capable of deciding the recklessness issue," he wrote, "and we should resolve that question now."

Justice Thomas, who would have upheld Elonis's conviction, said the majority's approach was unsatisfactory. "This failure to decide," he wrote, "throws everyone from appellate judges to everyday Facebook users into a state of uncertainty." Reported in: *New York Times*, June 1.

The Supreme Court ruled June 1 for a Muslim woman who did not get hired after she showed up to a job interview with clothing retailer Abercrombie & Fitch wearing a black headscarf.

The justices said that employers generally have to accommodate job applicants and employees with religious needs if the employer at least has an idea that such accommodation is necessary.

Job applicant Samantha Elauf did not tell her interviewer she was Muslim. But Justice Antonin Scalia said for the court that Abercrombie "at least suspected" that Elauf wore a headscarf for religious reasons. "That is enough," Scalia said in an opinion for seven justices.

The headscarf, or hijab, violated the company's strict dress code for employees who work in its retail stores.

Elauf was 17 when she interviewed for a "model" position, as the company calls its sales staff, at an Abercrombie Kids store in a shopping mall in Tulsa, Oklahoma, in 2008. She impressed the assistant store manager with whom she met. But her application faltered over her headscarf because it conflicted with the company's Look Policy, a code derived from Abercrombie's focus on what it calls East Coast collegiate or preppy style.

Abercrombie has since changed its policy on headscarves and has settled similar lawsuits elsewhere.

The federal Equal Employment Opportunity Commission filed suit on Elauf's behalf, and a jury eventually awarded her $20,000. But the federal appeals court in Denver threw out the award and concluded that Abercrombie & Fitch could not be held liable because Elauf never asked the company to relax its policy against headscarves.

Justice Samuel Alito wrote separately to agree with the outcome, but not Scalia's reasoning. Justice Clarence Thomas dissented. Reported in: Associated Press, June 1.

The U.S. Supreme Court on June 18 ruled that Texas did not violate free speech rights when it rejected a proposed specialty vehicle license plate displaying the Confederate flag, to some an emblem of Southern pride and to others a symbol of racism.

The 5-4 ruling will give states that issue specialty license plates wide latitude to decide which ones to approve. The court's four liberals were joined in the decision by conservative Clarence Thomas.

The court found that Texas did not infringe on the U.S. Constitution's First Amendment free speech guarantee when it turned away the application by the Sons of Confederate Veterans. The group says it aims to preserve the "history and legacy" of soldiers who fought for the pro-slavery Confederacy in the U.S. Civil War.

"Free speech is a fundamental right to which all Americans are entitled, and today's ruling upholds Texas's specialty license plate program and confirms that citizens cannot compel the government to speak, just as the government cannot compel citizens to speak," Texas Attorney General Ken Paxton said in a statement.

States can generate revenue by allowing outside groups to propose specialty license plates that people then pay a fee to put on their vehicle.

"I hate that we were turned down," said Gary Bray, commander of the Texas division of the Sons of Confederate Veterans. "We deserve the rights like anyone else to honor our veterans," added Bray, who said his group likely will submit a revised design.

The state declined in 2010 to approve the plate with the Confederate flag. The flag in question, a blue cross inlaid with white stars over a red background, was carried by Confederate troops in the Civil War.

The court, in an opinion by Justice Stephen Breyer, said the state's action did not touch upon free speech rights because messages on state-issued plates are government speech, not private speech. When a message is government speech, officials have more leeway to determine what messages they want to approve without violating the U.S. Constitution's First Amendment free speech guarantee.

Breyer said that license plates are "essentially, government IDs." Messages conveyed on plates can be interpreted as government-endorsed because "each specialty license plate design is formally approved by and stamped with the imprimatur of Texas."

During the oral argument in the case in March, a major concern for some justices was that if the state has no say over what messages to allow, it would pave the way for other potentially offensive messages such as images of Nazi swastikas or statements promoting the Islamist militant group al Qaeda.

Breyer said in the ruling that Texas can offer plates that say "Fight Terrorism" but "need not issue plates promoting al Qaeda."

The proposed design from the Sons of Confederate Veterans featured a Confederate battle flag surrounded by the words "Sons of Confederate Veterans 1896." The group's Texas chapter said its members' free speech rights were violated when the state rejected the plate. Several other states have approved similar plates.

The case is *Walker v. Sons of Confederate Veterans*. Reported in: *New York Times*, June 18.

The Supreme Court on June 18 unanimously ruled that an Arizona town had violated the First Amendment by placing limits on the size of signs announcing church services.

The case, *Reed v. Town of Gilbert*, concerned an ordinance in Gilbert, Arizona, that has differing restrictions on political, ideological and directional signs. It was challenged by a church and its pastor.

All of the justices agreed that the distinctions drawn by the ordinance were impermissible. But they divided 6 to 3 on the rationale, with the majority saying that all content-based laws require the most exacting form of judicial review, strict scrutiny, one that is exceptionally hard to satisfy.

"Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests," Justice Clarence Thomas wrote for the majority.

He suggested that a great many laws, some far removed from sign ordinances, may be subject to constitutional attack. "Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed," he wrote, citing as an example a decision on the marketing of pharmaceuticals.

Justice Elena Kagan, who wrote an influential law review article on how to think about content-based laws, said the majority's reasoning was far too sweeping. "I see no reason why," she wrote, "such an easy case calls for us to cast a constitutional pall on reasonable regulations quite unlike the law before us."

The town's defense of its ordinance, she wrote, "does not pass strict scrutiny, or intermediate scrutiny, or even the laugh test." Justices Ruth Bader Ginsburg and Stephen G. Breyer joined Justice Kagan's concurrence.

The ordinance set limits on the dimensions of various kinds of temporary signs based on the messages they conveyed. Political signs, concerning candidates and elections, were permitted to be as large as 32 square feet, were allowed to stay in place for months and were generally unlimited in number. Ideological signs, about issues more generally, were not permitted to be larger than 20 square feet, could stay in place indefinitely and were unlimited in number.

But signs announcing church services and similar events were limited to six square feet, could be displayed only just before and after an event, and were limited to four per property.

Those distinctions, Justice Thomas wrote, were not permitted by the First Amendment. "If a sign informs its reader of the time and place a book club will discuss John Locke's *Two Treatises of Government*," he wrote, "that sign will be treated differently from a sign expressing the view that one should vote for one of Locke's followers in an upcoming election, and both signs will be treated differently from a sign expressing an ideological view rooted in Locke's theory of government."

"More to the point," he added, "the church's signs inviting people to attend its worship services are treated differently from signs conveying other types of ideas."

A second concurrence from three justices who signed Justice Thomas's majority opinion said municipalities can still enact many kinds of content-neutral sign regulations. Justices Samuel A. Alito Jr., joined by Justices Anthony M. Kennedy and Sonia Sotomayor, gave examples in an extended list.

Laws regulating the size and location of signs are content neutral, Justice Alito wrote. So are ones that restrict the total number of signs on a road or that draw distinctions between signs on public and private property.

Justice Kagan called the list commendable but inadequate. "This court," she wrote, "may soon find itself a veritable Supreme Board of Sign Review." Reported in: *New York Times*, June 19.

The Supreme Court declined June 29 to hear Google's appeal of an ongoing dispute with Oracle over whether certain elements of the Java programming language can be copyrighted. At the core of the case is a question of whether certain elements of software can be freely copied to make different systems work together.

When Google was developing the Android smartphone operating system, it copied parts of Java so that Java software could work on its system. Application programming interfaces (API), as such technical elements are called, are used by many software developers to allow different systems to communicate with one another.

Oracle, which had bought the company that made Java, sued Google for using the API without permission—setting up the current legal battle.

With its decision the Supreme Court let a 2014 ruling in favor of Oracle stand and sent the case back to a lower court.

Google has argued that allowing the copyright protection over APIs will greatly hinder software development across the industry. They say that the API is a "functional characteristic" of the programming language and therefore shouldn't be subject to copyright.

Should Google eventually lose in the lower courts, both the cost to it and the impact on Android, the most widely used software for smartphones, are uncertain.

There are also considerations for the industry. APIs are elements of software code that allow pieces of software to share data and behavior. They are critical when computing moves to smartphones, apps and increasingly popular cloud computing.

"You shouldn't let the owner of an API end up owning the other person's program," said Michael Barclay, special counsel to the Electronic Frontier Foundation, a tech nonprofit devoted to civil liberties. "I don't think we'll find out how bad a day this is for a long time."

Both Google and Oracle have enormous financial resources and indicated that they were committed to more litigation.

"We will continue to defend the interoperability that has fostered innovation and competition in the software industry," said a Google representative.

Oracle painted the court's decision as protecting, not hindering, innovation. "Today's Supreme Court decision is a win for innovation and for the technology industry that relies on copyright protection to fuel innovation," said Oracle's General Counsel Dorian Daley.

The case has divided the technology industry and the Obama administration, which was asked to weigh in on the case by the court.

The White House ultimately sided with Oracle, saying the case could be better adjudicated if it was returned to the lower courts.

"Although petitioner has raised important concerns about the effects that enforcing respondent's copyright could have on software development, those concerns are better addressed through petitioner's fair-use defense, which will be considered on remand," the solicitor general's filing in the case said.

The Obama administration has been an ally of Google in the past, but there were reportedly many in the administration who were skeptical of the technology firm's arguments.

Others in the tech sector were supportive of Google's case. "The Federal Circuit's decision poses a significant threat to the technology sector and to the public," the Electronic Frontier Foundation said in a brief submitted to the court and signed by computer scientists. "If it is allowed to stand, Oracle and others will have an unprecedented and dangerous power over the future of innovation."

"I don't think this decision will have much effect" on the software industry, said Pamela Samuelson, a law professor at the University of California, Berkeley. She added, "Some of us were hoping for a little more clarity on copyright, but that will come from other courts."

Samuelson, who earlier wrote a court brief in support of Google, said that the Oracle-Google case had so many specifics that it would have been a poor case on which to establish general principles for the rest of the industry. The district court, she noted, was under no obligation to follow the court of appeals in future rulings about APIs.

"There are a lot of things about APIs that are different now" than when Oracle first sued Google, Samuelson said. "We may see some more cases now brought to the Ninth Circuit, as people test out what the law says." Reported in: *The Hill*, June 29; *New York Times*, June 29.

libraries

Chapel Hill, North Carolina

A trip to the library landed James Elder in jail. In 2011, authorities caught Elder with explicit photographs of 15-year-old girls on his email account. He served 15 months in state prison and, after his release last year, became homeless. Last December the 46-year-old visited the Chapel Hill Public Library to job hunt on one of its free computers, he says. His probation officer had suggested that visiting a library was permissible, provided that a children's event wasn't being held there.

One floor below the library's "Kids Room," Elder pecked at a keyboard. Another patron recognized him as a sex offender and alerted library staff, who in turn called police. Five days later, after contacting the state Attorney General's Office for guidance, Chapel Hill police charged Elder with two felony counts of "Sexual Offender Unlawfully on Premises." The indictment alleged he was within 300 feet of a location intended primarily for minors, and in a place where minors gather for regularly scheduled programs.

Though the charges put Elder at risk of more prison time, he nevertheless declined a plea offer for probation. Instead, he went to the Orange County Jail, where he stayed for four months because he couldn't afford the $2,500 bond.

Elder explained the motivation behind his fight. "The way the law reads, it's confusing," he said. "It's like I have to pretty much stay at home 24/7."

His argument proved persuasive. In April an Orange County judge dismissed Elder's charges, declaring parts of North Carolina's sex-offender law unconstitutional. A library patron's quest for information and ideas is a fundamental First Amendment right, Judge Allen Baddour ruled.

"It is difficult to imagine many public libraries in North Carolina that are sufficiently large such that popular books, reference materials, and computers are greater than 300 feet away from the children's reading areas," Baddour said. Though the North Carolina law does not explicitly bar sex offenders from libraries, Baddour said the statute was tantamount to an all-out ban.

Elder's case exemplifies a contentious national debate about the rights of sex offenders. In 2008, North Carolina was among several states to pass versions of the Jessica Lunsford Act, named for the 9-year-old from Gaston County who was kidnapped, raped and buried alive by a convicted sex offender. The law essentially criminalized a sex offender's presence at some locations, such as parks and schools.

Elder, who is from Onslow County, has an associate's degree in business management, and has done "just about everything," he said, including cooking, carpentry, customer service and business management. He acknowledged he has a sex addiction, which he manages through Reformers Anonymous meetings.

Elder said he used the Chapel Hill library to look for a job because other area computer labs have time limits. "When I'm trying to get my résumé together, an hour is not enough. As long as I'm doing something productive—looking for a job or researching, or just relaxing—I don't see using the library as a problem."

But Assistant District Attorney Jeffrey Nieman argued that people don't have a fundamental right to every public library service; moreover, Elder could go to university libraries where children weren't present. In his ruling, however, Baddour declared that university libraries don't provide an equal level of general information that public libraries do.

The vagueness and overbreadth of the law underpinned Baddour's ruling. "It is unreasonable to expect this defendant, or the average sex offender, or the average law enforcement officer, or the average citizen, to predict what locations are covered and what activity is unlawful."

Among Baddour's criticisms were whether "place" refers to the whole property or to specific areas, and the definition of "regularly scheduled." As for the 300-foot rule, Baddour asked, "What if they were only 20 feet apart through the ceiling, even if no direct access existed?"

Baddour's order is consistent with a legal movement to loosen harsh location restrictions on sex offenders. In 2012, the North Carolina Court of Appeals said the law was unconstitutionally vague as applied to a sex offender who stood on an adult softball field adjacent to a Tee Ball field.

Elsewhere in the country, sex offender location laws are waning. In March, California officials announced some sex offenders could live within 2,000 feet of schools and parks.

Unless the DA's Office appeals Baddour's order, the case is unlikely to affect cases outside of Orange County. But a federal complaint about the constitutionality of location restrictions is being litigated in a federal court in North Carolina. An anonymous group of sex offenders have sued Attorney General Roy Cooper for denying them access to certain public areas, including libraries, churches and their children's sporting events. Cooper filed a recent motion to dismiss the suit, but a judge denied it.

When Elder received the news he won his case and would be released from jail, "I was ecstatic," he said, "I was jumping up and down for joy. It was like a birthday present and a Christmas present combined." He is living in a shelter and is applying for dishwasher jobs. "I'm just trying to take it one day at a time." Reported in: *Indy Week*, May 6.

schools

Alamance County, North Carolina

The North Carolina Court of Appeals recently upheld a criminal conviction of cyberbullying against a high school student who posted multiple lewd comments about a classmate on Facebook.

Robert Bishop, then a 16-year-old student at Southern Alamance High School, was convicted of one count of cyberbullying under North Carolina general statute § 14-458.1(a)(1)(d) in response to multiple comments he posted about former classmate Dillion Price on Facebook during the 2011-12 school year.

The statute, passed in 2009, makes it a crime for person to use a "computer or computer network" to post or encourage others to post on the Internet "private, personal, or sexual information pertaining to a minor" with the intent to "intimidate or torment" a minor.

Bishop, according to a brief filed by counsel, challenged his conviction on the grounds that the statute is an "unconstitutionally overbroad" criminalization of protected speech—speech that does not encompass the narrow categories of speech denied First Amendment protection, defined as: fighting words, incitement, obscenity, and true threats.

Bishop argued that North Carolina's statute is not content-neutral as generally required by the First Amendment—it identifies and punishes communications that relate to "private, personal, or sexual information" pertaining to a minor. Meanwhile, the state argued that the statute does not punish the communication of thoughts or ideas, and that because the act of using the Internet to "intimidate and torment" is not constitutionally protected, the statute is not overbroad, according to the brief filed by the state.

The appeals court determined that the statute was not content-based, as Bishop would not have been convicted without proof of intent to intimidate or torment Price. The statute regulates conduct, not speech, and any effects on speech are "merely incidental" and no greater than necessary, said the court.

The intersection of free speech and safety on social media has been a topic of conversation for years, but recent controversies have thrust the issue into the spotlight. The Supreme Court recently heard another appeal based on First Amendment grounds in *Elonis v. United States*—although that case ended with a ruling in favor of the defendant (see page 101). Anthony Elonis, an aspiring Pennsylvania rapper who posted violent lyrics on Facebook regarding his estranged wife, co-workers, a kindergarten class, and state and federal law enforcement, was convicted under a federal threat statute before the Court reversed his conviction. The Court determined that a person can be convicted for online threat speech only with proof of awareness that the speech will be received as threatening by the target.

North Carolina's statute itself is part of a "worrying trend" that the Foundation for Individual Rights in Education has seen over the past several years—that cyberbullying has been prohibited without defining what cyberbullying is, said Will Creeley, vice president of legal and public advocacy for FIRE. Officials add cyberbullying to lists of prohibited behaviors, as if the definition of cyberbullying was "self-evident," he said.

"The opinion is frustrating, for, I think, a number of reasons, not the least of which is the court seems to dismiss the defendant's First Amendment claims without appropriate consideration of the wide reach of the statute," Creeley said.

Creeley believes that the court did not fully consider the breadth of the statute in question, conducting only a "cursory review" of the statute's reach. "I think the court had an opinion in mind and appears to have worked backward to justify it," said Creeley. He added that the court may not have been able to see past the "instant facts" of the case—the vulgarity of Bishop's speech toward Price.

Bishop's comments included disparaging remarks about Price, including remarks related to sexual practices. He also expressed regret that he did not get to "slap him [Price] down" before Christmas break.

The charge was filed after Alamance County Sheriff's Detective David Sykes began an investigation into the allegations of cyberbullying after Price's mother discovered the derogatory comments when she confiscated Price's phone and contacted law enforcement.

Bishop was sentenced to a suspended sentence of 30 days in the custody of the Alamance County Sheriff and placed on supervised probation for a period of 48 months.

The appellant will seek review of the decision in the North Carolina Supreme Court, Staples Hughes, North Carolina's Appellate Defender, said in an email.

Creeley said he's worried that this ruling may lead to other prosecutions of online speech that might threaten First Amendment interests. The U.S. Supreme Court properly defined student-to-student harassment in *Davis v. Monroe County Board of Education*, said Creeley. In that 1999 decision, the court ruled that damages could be sought for harassment only when it was so "severe, pervasive, and objectively offensive" that the target couldn't receive full educational benefits.

Even though state policies against cyberbullying may have the best of intentions behind them, he said that these provisions are often written without sufficient concern for First Amendment rights, and can be used by administrators to censor unwanted speech.

"It's too easy, in our experience, to wield the 'cyberbullying' [policies] against speech that people in power simply don't like," he said. Cyberbullying is also prohibited under anti-harassment policies, making separate anti-cyberbullying provisions redundant, Creeley said.

Creeley predicts a chilling effect on student speech as a result of policies like the one in North Carolina. "If you can't tell what is and isn't prohibited, it's smart to just keep your mouth shut, and that's the chilling effect that the First Amendment prohibits," Creeley said. Reported in: splc.org, June 29.

Colton, Oregon

A U.S. District Court judge has ruled that an Oregon eighth grader's rant to a friend on Facebook that his health teacher was "just a bitch" and "she needs to be shot" was not a true threat of violence but was instead protected free speech.

The student "did not intend to threaten or otherwise communicate with [the teacher] and did not seriously believe that [the teacher] should be shot," U.S. District Court Judge Michael W. Mosman of Portland wrote in his ruling.

The case arose in 2012, when Braeden Burge was a 14-year-old who was frustrated with the C grade he had received from his health teacher, Veronica Bouck. Burge was at home chatting on Facebook with a fellow student who was in his circle of Facebook friends when he had the exchange about Bouck, according to court papers.

"She's the worst teacher ever," Burge wrote to his friend, who asked what she had done. "She's just a bitch haha," Burge responded. He soon added, "Ya haha she needs to be shot."

Burge's mother found the exchange soon after and made him delete the comments. Six weeks later, a parent anonymously supplied a printout of the exchange to the principal of Colton Middle School. The principal gave Burge three-and-a-half days of in-school suspension.

Burge and his mother sued the school district, arguing that the boy's free-speech rights had been violated. The suit revealed that the teacher, Bouck, was nervous and upset by Burge's comments when she learned of them, and she did not want him back in her class.

After the student served his suspension, he returned to his classes, including Bouck's, without incident. (Court papers suggest, however, that the school assigned an aide to tail Burge on a class field trip that was supervised by Bouck.)

In his April 17 decision in *Burge v. Colton School District*, Mosman accepted the recommendations of a federal magistrate in favor of summary judgment for the student and his mother. Mosman noted that in 2013, the U.S. Court of Appeals for the Ninth Circuit, in San Francisco, held in *Wynar v. Douglas County School District* that students could be disciplined at school for off-campus speech that caused a disruption at school. (Oregon is part of the 9th Circuit.)

Applying the Wynar case, as well as the U.S. Supreme Court's landmark 1969 student speech decision in *Tinker v. Des Moines Independent Community School District*, Mosman held that a rational juror could not find Burge's off-campus Facebook comments to have caused "a material and substantial interference with appropriate school discipline."

"The comments did not cause a widespread whispering campaign at school or anywhere else," the judge said. "No students missed class and no [Colton Middle School] employees, including Ms. Bouck, missed work."

The judge found it significant that upon learning of Burge's Facebook comments, no school official found it necessary to contact the police or learn whether Burge had access to guns. "Instead, [the principal] simply required [Burge] to sit in a school office near the teachers' mailboxes for three-and-a-half days," Judge Mosman said. "Without taking some sort of action that would indicate it took the comments seriously, the school cannot turn around and argue that [Burge's] comments presented a material and substantial interference with school discipline."

The judge ordered the Colton school district to remove Burge's suspension from his school records and to pay his family's attorney's fees and costs. Reported in: *Education Week*, May 6.

Everett, Washington

Students at a Washington state high school will be allowed to hand out non-student-produced materials, after a federal judge ruled that banning distribution of non-original literature is unconstitutional. The judge's May 29 ruling does allow reasonable restrictions on the time and place materials can be distributed.

Michael Leal, a senior at Cascade High School, filed a lawsuit in November 2014 against Everett Public Schools after being asked to stop handing out religious material on campus by school administrators. In his original complaint, Leal alleged that when preaching about his Christian faith and handing out written materials in early September 2014 during lunch, Cascade Principal Cathy Woods and Vice Principal Laura Phillips pulled him aside after the break and told him he "would get in trouble" if he continued to distribute materials.

After additional similar incidents, Leal was given a notice of disciplinary action and suspended from school for two days in early October due to what the school described as "boisterous conduct of religious material [that] impinged on rights of other students and failure to comply to multiple administrative requests to stop activity."

Leal was suspended once again a week later after handing out material at an after-school volleyball game for not complying with the guidelines the school laid out. After exchanging legal correspondence with the school district, in which Leal's attorneys asked for his record to be cleared in regards to preaching and permission to preach during non-instructional time, a dispute over school policies emerged.

School policies in effect at the time gave the principal authority to "monitor student verbal expression," and to permit the on-campus distribution of only student-produced materials, at school entrances before and after school.

Leal's request for a preliminary injunction, which asked to restrain school administrators from interfering with Leal's preaching and distribution of religious material during non-instructional time, was denied by U.S. District Court Judge Thomas Zilly in February, a precursor to the more recent ruling.

The judge wrote in the February opinion that he did not view the Supreme Court's *Tinker v. Des Moines Independent Community School District* precedent as applying to a "viewpoint-neutral" regulation on speech, noting that the distribution rule applied to publications regardless of viewpoint.

"The Supreme Court has never held that *Tinker* is the appropriate analytical framework for the consideration of viewpoint-neutral regulations," Zilly wrote. "While *Tinker* is appropriately applied to those restrictions aimed at suppressing student expression or a particular viewpoint, a lower standard is demanded where this is not the case."

While Zilly did not grant the preliminary injunction in February, he did express concerns about the limits on non-original materials. The judge wrote that he was "troubled by the fact that the School District's policy would prohibit students from passing out materials such as the Constitution," but concluded that a preference for student-generated literature "may serve an important educational goal and be upheld under the First Amendment."

After the February ruling, Zilly received additional briefing that resulted in a final ruling walking back part of the initial ruling, according to Kevin Snider, Leal's attorney. Zilly found board policies to be unconstitutional in part, saying students do not need to write original material to pass it out on campus.

"The judge was very troubled by the original authorship rule, so it wasn't a complete shock that he reversed himself on that," Snider said. "The implications would be that you ironically couldn't pass out the First Amendment because you didn't write it yourself. So I think that's the reason he changed course on that."

The school district expressed satisfaction with the ruling, saying that the only change between the preliminary injunction ruling and the ruling from the bench was that students can pass out material that they did not write or produce.

"Judge Zilly's ruling on the parties' cross-motions for summary judgment were consistent with his ruling on the preliminary injunction request," Sarah Heineman, an attorney for Everett Public Schools, said. "In both decisions, he upheld the bulk of the district's policy—what are legally known as the 'time, place, and manner' restrictions on the distribution of materials."

The ruling also vacates the discipline on Leal's record for disobeying the ban on non-student-produced literature.

Snider believes that the ruling did not go far enough to protect the First Amendment. "We believe that this was one of the most restrictive policies in the country," Snider said. "We think that the interior of campuses should be open. Not in the classroom during instruction time, but outside of the classroom during lunch or breaks. That should be

essentially free time that students should be able to exercise speech activities."

Leal will graduate from Cascade High School on June 13, according to Snider.

"Each side has a right to appeal the decision within 30 days," Heineman said. "At this time, the District is carefully reviewing and considering all of its options." Reported in: splc.org, June 8.

colleges and universities

Morgantown, West Virginia

West Virginia's highest court has joined several other state courts in striking a balance between the disclosure of public documents and protecting free academic discourse.

On May 21, the Supreme Court of Appeals of West Virginia held that West Virginia University School of Medicine (WVU) was not required to release a professor's documents, emails, and other communications related to the "planning, preparation and editing necessary to produce a final published article."

The case arose when Highland Mining Company lodged a request with WVU under the state's Freedom of Information Act (FOIA), seeking disclosure of documents related to several articles co-authored by former WVU professor Michael Hendryx that link surface coal mining with negative health impacts in local communities. WVU refused the request.

After Highland filed suit, WVU released some documents but withheld others, including some documents related to the drafting, editing, and peer review of Professor Hendryx's articles. The lower court ruled that these remaining documents were protected from disclosure under several statutory exceptions to the state FOIA, including an "internal memoranda" exemption and an "academic freedom" privilege the court read into the existing "personal privacy" exemption.

The state high court affirmed in part and reversed in part, but ultimately protected from disclosure the drafting, revising, and back-and-forth communications between academics that precede published work. Cognizant of its duty to strictly construe FOIA exemptions, the court declined to accept the trial court's new "academic freedom" privilege within the "personal privacy" exemption, which generally protects the type of information kept in a "personal, medical or similar file." However, the court agreed that most of the withheld documents were protected from disclosure under the "internal memoranda" exemption, which protects the "deliberative decision-making process" of public bodies.

The Supreme Court of Appeals rejected Highland's argument that the "internal memoranda" exemption covered only the policy-making communications of state agencies. Rather, the court held that it applies to the decision-making of all public bodies: "The FOIA reflects our Legislature's recognition that disclosure of public body communications reflecting deliberative processes on any subject could have a chilling effect on future communications."

The court then considered whether the documents withheld by WVU were (1) "predecisional," meaning they were generated before publication, and (2) deliberative. It concluded:

"In the state higher education academic setting, documents generated before the final publication of a scientific research article—all documents related to the initiation, preparation and publication of the articles—are by their very nature predecisional. Second, WVU has shown that any document, regardless of its nature, that exposes the give-and-take of the scientific research consultative process, by revealing the manner in which the researchers evaluate possible alternative outcomes, is deliberative."

The court consequently held that "[t]he involuntary public disclosure of Professor Hendryx's research documents would expose the decision-making process in such a way as to hinder candid discussion of WVU's faculty and undermine WVU's ability to perform its operations," affirming the lower court's holding on the "internal memoranda" exception. Reported in: thefire.org, June 2.

surveillance

Washington, D.C.

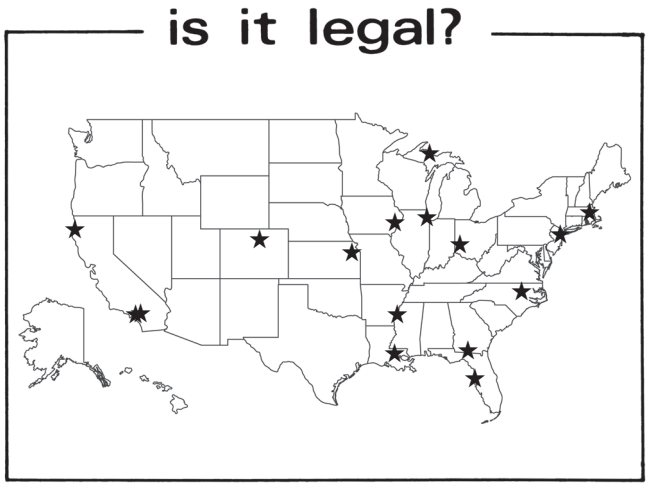
A federal court has revived the National Security Agency's bulk collection of Americans' phone records, a program that lapsed when sections of the USA PATRIOT Act briefly expired.

The Foreign Intelligence Surveillance Court approved a government request to renew the dragnet collection of U.S. phone metadata for an additional five months—a time frame allowed under the USA Freedom Act, a newly enacted surveillance reform law that calls for an eventual end to the mass spying program exposed by Edward Snowden two years ago (see page 87).

The Senate passed the Freedom Act days after allowing the June 1 expiration of the USA PATRIOT Act's three spying provisions, including Section 215, which the NSA uses to justify its bulk collection. The court order renews the surveillance until November 29, 2015—six months after enactment of the reform law.

"This application presents the question whether the recently-enacted USA Freedom Act . . . ended the bulk collection of telephone metadata," the order, issued June 29, reads. "The short answer is yes. But in doing so, Congress deliberately carved out a 180-day period following the date of enactment in which such collection was specifically authorized. For this reason, the Court approves the application in this case."

(continued on page 126)



libraries

Wake County, North Carolina

Liberty Counsel, an Orlando-based nonprofit promoting a Christian view of America's founding, has filed a federal lawsuit against Wake County after the Cameron Village public library denied it access to stage programming in one of its conference rooms. The lawsuit alleges that the library's policy is unconstitutional and discriminatory, in violation of the First and Fourteenth Amendments.

The 25-page complaint, filed April 24 in the Eastern District of North Carolina, cites two occasions in which the library denied its applications to use the workshops to offer free programming to the public. The suit seeks a permanent injuction on the library's policy denying workshops on religious grounds, along with nominal damages.

In 2013, Liberty applied to use one of the library's workshops, acknowledging its intent to quote extensively from the Bible, the founding fathers' religious views and sermons from the founding era. Liberty also disclosed their intention to open the program with a devotional.

A library administrator canceled Liberty's application, informing the group that "religious instruction, services or ceremonies are not permitted."

In the suit, Liberty claims that public libraries are a marketplace of ideas, and that governments cannot censor religion from the marketplace. It lists other nonprofit groups previously permitted to stage events in Wake's libraries, including the Mat Yoga group, Money Smart: Save with Coupons, Craft It: Bold Button Jewelry, The Art of Screenwriting, the Local History Tea Party, and the Music to Celebrate America program, along with several local book clubs.

The suit seeks permanent injunctive relief and nominal damage relief under the First and Fourteenth Amendments.

"Cameron Village Regional Library violates its own mission by denying the citizens of Wake County the pursuit of knowledge of American history, particularly our religious foundation," Liberty founder Mat Staver said. Reported in: *Indy Week*, May 6.

schools

Longmont, Colorado

A Colorado charter school refused to let a class valedictorian deliver a graduation speech in which he planned to come out as gay, prompting criticism from activists.

Evan Young, 18, said he agreed to make some suggested changes to the speech he planned to deliver on May 16 at the commencement ceremony for Twin Peaks Charter Academy High School in Longmont. But he refused to remove the disclosure about his sexuality.

"My main theme is that you're supposed to be respectful of people, even if you don't agree with them. I figured my gayness would be a very good way to address that," he said.

He and his father, Don Young, said they weren't notified until just a few minutes before the ceremony that Evan Young wouldn't be allowed to speak or be recognized as valedictorian. Evan Young said he previously emailed a speech with other suggested changes to school officials, but they contend that he didn't submit a revised version.

In a statement, the district said the first draft also included ridiculing comments about faculty and students and was condescending toward the school. School attorney Barry Arrington said in the statement that a graduation speech is not the time for a student to "push his personal agenda on a captive audience."

Before the ceremony, Don Young said school principal P.J. Buchmann called and said the speech was a problem because his son had mentioned another student's name and planned to come out as gay. Don Young said he and his wife didn't know their son was gay. They were initially sympathetic to Buchman's objections to the speech, considering there would be young children at the event, but did not like how Buchman handled the matter.

"It's wrong, and it's not fair," said Mardi Moore, executive director of Out Boulder, a gay activist group. "The young man has all but a 4.5 GPA; he has told me that since a toddler he has worked for that honor, and they denied it."

Out Boulder asked Young to deliver his speech at an annual awards event. Reported in: talkingpointsmemo.com, May 29.

Hudson, Florida

A Florida high school teacher was suspended without pay for five days June 2 for deploying a signal jammer in his science class to block students from using their mobile phones. Superintendent Kurt Browning said in a Pasco County School Board reprimand letter to instructor Dean Liptak that he exercised "poor judgment" and "posed a serious risk to critical safety communications as well as the possibility of preventing others from making 911 calls."

Liptak was accused of jamming mobile devices from his Fivay High School classroom between March 31 and April 2. Verizon discovered the blockage on the cell tower located on campus.

The teacher said he did the deed for education's sake. According to his letter to the district, he said he "could hit the off button if there was any type of emergency and the phone signals would instantly activate." He also said a local police officer told him before he deployed the device that "there are no state laws against using them as long as you don't use them for malicious intent."

The Federal Communications Commission, meanwhile, says that "federal law prohibits the operation, marketing, or sale of any type of jamming equipment."

It was not immediately clear where Liptak got the device. He wrote to the school board that he found them for sale on Amazon and watched "videos on how to make them on YouTube."

Local media described Liptak as a former professional wrestler who was "reprimanded in 2013 after he used violent questions on a test referencing the velocity of a student thrown against a wall by a teacher and the mass of a car running over a baby." Reported in: arstechnica.com, June 3.

colleges and universities

Arcata, California

Jacquelyn Bolman, formerly director of the Indian Natural Resources Science and Engineering Program at Humboldt State University, was fired last fall and is now alleging in a lawsuit that HSU was motivated by her criticism of the university, in violation of her First Amendment rights.

Bolman had been vocal in her opposition to what she viewed as a "racist campaign to undermine and eliminate Native [American] student programs" by former HSU president Rollin Richmond. She had also written a report to the California State University Louis Stokes Alliance for Minority Participation accusing HSU of "not support[ing] minority students, faculty or staff."

In January, students protested Bolman's termination and demanded her reinstatement, along with other proposed measures relating to diversity on campus. According to the *Eureka Times-Standard*, Bolman alleges that HSU administrators told her criticizing the university was a key factor in her termination. Reported in: thefire.org, May 14.

Pomona, California

A month after a Cal Poly Pomona student sued the university over a policy that limited political speech to permit-holders standing in a defined area on campus, the university has said it will not enforce the policy while the matter is being litigated.

"We have agreed to a standstill while we go through negotiations," Cal Poly spokeswoman Esther Tanaka said. "We're pleased that the negotiations have been productive."

On March, 31, a lawsuit was filed in U.S. District Court in Los Angeles on behalf of Nicolas Tomas, 24, a senior majoring in nutrition, an animal rights activist. Tomas has been handing out Vegan Outreach pamphlets since the fall of 2013. His preference was to distribute them near the university's parking garage, to take advantage of the high amount of foot traffic in the area. But, he said in April, he routinely heard from administrators, demanding that he leave if he did not possess a permit.

Last fall, he met with administrators who told him he had to stand in a triangle of grass, 154 square feet in area, formed by sidewalks running between the university library and Bronco Student Center.

The California State University system has no such "free speech zone" policy, according to a CSU spokeswoman, and the system's own Free Speech Handbook argues against sweeping restrictions on speech.

Tomas ignored what he believed was an unconstitutional demand and, on February 4, while distributing flyers near the university's administrative building, university police shut him down, an incident he caught on video.

He reached out to FIRE, the Foundation for Individual Rights in Education, a non-profit that advocates for free speech on campuses. They brought in First Amendment lawyer Robert Corn-Revere, who filed the lawsuit on Tomas' behalf.

The university—which has been in settlement talks with FIRE, according to the non-profit—announced it would suspend the policy for now. "We're very hopeful based on the university's recognition that the current policy is problematic and cannot stand," said Will Creeley, vice president of legal and public advocacy for FIRE.

Students will not be required to check in or register, although off-campus individuals will still need to check in with the Office of Student Life and display a permit, similar to what outside vendors have to display.

"I'm still waiting for them, hopefully, to announce it," Tomas said. "I hope that students hear it and know they can voice whatever they feel passionate about." The scrutiny from the university has made him uncomfortable, he said, and he hasn't handed out any leaflets or protested in weeks.

Tomas' suit is the ninth such filed as part of FIRE's Stand Up for Speech Litigation Project, according to a news release from the organization and the third filed against a California college or university. Modesto Junior College and Citrus College have previously settled their

suits, changing their free speech policies and paying monetary settlements, $50,000 for Modesto Junior College and $110,000 for Citrus College. Reported in: *Inland Valley Daily Bulletin*, May 6.

Valdosta, Georgia; Dayton, Ohio; Irvine, California

What started as a small demonstration denouncing the mistreatment of black Americans snowballed into a national news story in April, prompting hundreds of protestors to descend on Valdosta State University for a rally that shut down the campus.

The demonstrators were on campus to show their support for the American flag, which was repeatedly stepped on during the earlier protests. Many were also there to show their support for a former Air Force staff sergeant who was briefly detained after attempting to steal and save the flag from under the protestor's feet. The same sergeant once posed nude with the American flag in *Playboy* magazine.

Police later found a gun inside a backpack allegedly belonging to one of the students who walked on the flag. That student is now missing, with police believing he is on the lam. A social media hashtag implores others to back the student and his ideology by photographing themselves also desecrating the American flag.

It was a dramatic couple of weeks at Valdosta, but the protest there was just one controversy of several involving the American flag to take place on college campuses in recent months.

Desecrating an American flag has officially been considered protected speech since 1989, when the U.S. Supreme Court decided that the First Amendment protects symbolic political expression, including burning the American flag. That hasn't stopped critics on social media and in the conservative press from calling for the students to be punished—or worse.

"If I see anyone I know step on the American flag I will personally shove the flag of another country up their ass," one Twitter user posted. Others have stated those standing on the flag should be "curb stomped" or have their necks snapped.

Valdosta State, where the furor was especially prevalent, is located in what is considered a military town. Moody Air Force Base is located ten miles from the city, and the university serves many military and veteran students. In a statement last month, William McKinney, the university's president, said he remained committed to those military students but also to upholding the First Amendment.

"While we respect the strong feelings held by many regarding our nation and its symbols, we also respect the rights of our students, faculty and staff to express themselves through constitutionally protected symbolic expression in an environment that encourages, rather than discourages, civil debate," McKinney said. "On April 17, Valdosta State University stood on the side of the Constitution of the United States of America and its students' right to express themselves, even in the face of widespread disagreement."

It's a stance that's shared by the president of Wright State University in Dayton, Ohio, also located near a large military installation. On the same day that hundreds of people peacefully marched with the American flag at Valdosta, students at Wright State were standing on flags of their own.

Like at Valdosta, the flag was stepped on because students said they viewed it as a symbol of white supremacy. In a letter to the university, students involved with the protest referenced the 2014 killing of John Crawford, a black man who was shot to death by police in a nearby Walmart. Police said they shot Crawford because he ignored commands to drop a rifle. The gun he was holding turned out to be a toy.

The Wright State protest, too, prompted a counterprotest in the form of a flag rally.

"Wright State University is sincere in its respect for our country and for what the flag represents," the university said in a statement. "As a university we recognize the act of standing on the flag as an extreme display of disrespect—especially to our men and women who have served in the U.S. armed forces and who sacrificed to protect these rights. We are proud of all of our students who exercised restraint and maturity in the face of positions that challenged their deeply held beliefs."

The University of California at Irvine also found itself in the crosshairs of conservative media—and even lawmakers—over a flag controversy there in March. This time, the furor was over an attempt by the student government's legislative committee to ban the flag from the organization's main lobby space. The argument for the ban was that "the American flag has been flown in instances of colonialism and imperialism," that the student government offices should be "inclusive," that some people don't feel included by the U.S. flag and that "freedom of speech, in a space that aims to be as inclusive as possible, can be interpreted as hate speech."

Some websites reported that the flag was banned, though the attempt was actually quashed by the student government's Executive Cabinet. Before long, the university was hearing from alumni angry that the university had allowed such a ban.

UC-Irvine released a statement, calling the effort "misguided."

"We hold the value of intellectual inquiry and the free and rigorous exchange of ideas as bedrock values of institutions of higher education," the university said. "And yet, we are constantly reminded that those values we cherish are, in part, guaranteed by the sacrifices made and the struggles waged to secure the freedom and democracy that the flag symbolizes. UCI never takes that for granted."

While UC Irvine administrators never attempted to ban the American flag, Republican lawmakers in California soon proposed a constitutional amendment that would bar it from ever doing so. If a university were to adopt such a ban,

the amendment states, it would lose state funding. "I came to this country as an immigrant searching for freedom and democracy, and I would not be here today if it were not for the American flag," Janet Nguyen, a state senator, said at a press conference while flanked by Vietnam veterans.

In March, U.S. Representative Sean Duffy, a Wisconsin Republican, announced a bill called the No Federal Funds Without the American Flag Act. The bill would amend the Higher Education Act of 1965 to prohibit an institution from receiving federal funds if it bans the display of a flag on campus. In a statement, Duffy said the proposed legislation was inspired by the incident at UC Irvine.

"I'm glad this was quickly reversed by the student body's executive cabinet," Duffy stated. "However, we have a duty to ensure this never happens again." Reported in: insidehighered.com, May 4.

Chicago, Illinois

Oakton Community College (OCC) is insisting that a one-sentence "May Day" email referencing the Haymarket Riot sent by a faculty member to several colleagues constituted a "true threat" to the college president.

Lawyers for the Chicago-area college argue that the email, which noted that May Day (May 1) is a traditional time for workers to remember the riot, threatened violence. Last month, OCC demanded that the now former faculty member "cease and desist" from similar communications in the future or face potential legal action.

May Day is celebrated every year on May 1 by the international labor movement to commemorate the fight for workers' rights. The celebration is historically associated with the 1886 Haymarket Riot in Chicago.

"Merely noting to one's colleagues that May Day is a time when workers 'remember' the Haymarket Riot does not constitute a 'true threat,'" said Ari Cohn, a Senior Program Officer and lawyer with the Foundation for Individual Rights in Education (FIRE). "The United States Department of the Interior has designated the Haymarket Martyrs' Monument a National Historic Landmark. If remembering the Haymarket Riot is a 'true threat,' the monument itself would be illegal."

On May 1, Chester Kulis sent an email to OCC colleagues that read, "Have a happy MAY DAY when workers across the world celebrate their struggle for union rights and remember the Haymarket riot in Chicago." The email, titled "May Day—The Antidote to the Peg Lee Gala," was written in response to a reception hosted by OCC in celebration of the retirement of college president Margaret B. Lee.

Kulis, who has taught at OCC since 1989, was listed on the college's website as a lecturer at the time he sent his email. Kulis sought to raise awareness of the perceived mistreatment of adjunct faculty members through his role with the Adjunct Faculty Association.

In response to Kulis's email, an attorney representing OCC wrote a cease-and-desist letter to Kulis on May 7, arguing that Kulis's reference to the Haymarket Riot was a threat of violence because the famous workers' rally in Chicago "resulted in 11 deaths and more than 70 people injured." The attorney, Philip H. Gerner III, went on to say that similar future communications could result in legal action.

FIRE, the Foundation for Individual Rights in Education, wrote to the college on May 22, asking the school to retract its cease-and-desist letter and to respect the right of faculty members to send emails like Kulis's. FIRE pointed out that far from being a "true threat," the email was constitutionally protected speech. Another lawyer representing the college responded on June 1, doubling down on the claim that Kulis's email "constituted a 'true threat'" and arguing that since President Lee was one of the recipients of the email, "she interpreted the communication as a threat against her personally."

"Colleges and universities are bending over backwards to label benign, constitutionally protected speech as 'violent' or 'threatening,'" said Cohn. "While sometimes administrators act out of an overabundance of caution, other times it's clear they are playing on our basest fears to justify censoring speech with which they simply disagree. In either case, the censorship cannot stand at a public college bound by the First Amendment, nor in any environment that claims to be committed to the marketplace of ideas."

In a remarkably similar case last year, Colorado State University–Pueblo deactivated Professor Tim McGettigan's email account, citing safety concerns, in response to an email that criticized the administration and evoked the Ludlow Massacre, a 1914 attack on striking miners and their families that resulted in numerous deaths.

Also in 2014, FIRE helped reverse the punishment of an art professor at New Jersey's Bergen Community College who was placed on leave and forced to undergo a psychiatric evaluation for posting a picture of his daughter wearing a Game of Thrones T-shirt that the school called "threatening." And in 2011, police and administrators at University of Wisconsin, Stout made national headlines after removing a Firefly poster from a professor's office door because it "refer[red] to killing" and "can be interpreted as a threat by others." Reported in: thefire.org, June 8.

Muscatine, Iowa; Marquette, Michigan; Cleveland, Mississippi

Three college media advisers were fired within six months—a spate Frank LoMonte, executive director of the Student Press Law Center, calls "one of the worst stretches I can remember."

Cheryl Reed from Northern Michigan University, James Compton of Muscatine Community College in Iowa, and

Patricia Roberts of Delta State University in Mississippi, all lost positions as student media advisers since November.

The cases mark the first time in almost a decade that college media advisers or students have taken legal action against university administrators for First Amendment violations, according to LoMonte.

Reed's case is the first time LoMonte can remember in which an adviser has filed a lawsuit for wrongful discharge. "I think we are going to get some guidance and clarity from the courts about the job security of advisers from these cases, for sure," LoMonte said. "What's been happening at Northern Michigan and at Muscatine is such blatant cause-and-effect retaliation that I'm not even sure the schools would or could deny it. These situations present very clear choices for the courts about how much they're willing to protect press freedom on campus, since removing a supportive adviser is one of the most effective ways to undermine freedom of the press."

Before these lawsuits, LoMonte said he could "count on one hand" the number of lawsuits filed by college media advisers and students; most of the cases were at least ten years ago and years apart. No organization—not the Student Press Law Center, nor the Associated Collegiate Press nor the College Media Association—has been tracking adviser firings over the years, so there is no definitive list or way to map trends. But, LoMonte, who is often among the first to hear of a case, said only 2011-2012, when four advisers were fired in rapid succession, compares to the current situation. Part of the reason no one is tracking cases of adviser dismissals is that each case is individual and often it's often hard to tell if censorship was the cause, LoMonte said.

LoMonte worries that colleges are getting more complacent and unapologetic about firing advisers they find troublesome. He said the Michigan and Iowa cases presented especially compelling facts that "cried out to be challenged." Curry's situation was, LoMonte said, perhaps the most heart-wrenching he can remember, as she was fired just before she went into brain surgery and was left without health insurance.

In Northern Michigan, Reed, who was fired as adviser of *The North Wind* in April, but is still an assistant professor with the English Department, filed her lawsuit with student journalist Michael Williams. In the lawsuit, Reed and Williams say Northern Michigan administrators who make up the newspaper's executive board have created a hostile environment for free speech on campus and have repeatedly tried to prevent student reporters from writing about topics unfavorable to the university. They accuse the administrators of firing Reed because of her outspoken support for student journalists. And, they say the administrators on the newspaper's board rejected Williams as incoming editor in chief because of his tough reporting on the university.

Both are asking to be reinstated and they have filed an injunction to prevent the administrators who make up the newspaper's board from filling their positions. Oral arguments on the temporary injunction were set for June 29. At that time, a federal judge will decide if the positions can be filled.

Reed insists the lawsuit is not about her or her position. In fact, she said, her life would be much easier if she didn't have to spend long hours working with student journalists and fighting for her students' rights. But if she didn't fight, she worries the problem would continue.

"After spending a year battling for freedom of the press and freedom of speech, nothing would have changed. If I left, all of these infringements would have kept going on. I had to do it," Reed said.

In Iowa, twelve current and former students at Muscatine Community College filed a similar complaint in the U.S. District Court on May 5, insisting free speech is in jeopardy at Muscatine because administrators are trying to control the content of the *Calumet* newspaper. They cite a pattern of oppression since 2013 and insist Compton was fired in retaliation for an article in the paper that criticized the way a faculty member spoke to a student journalist on the phone. Compton remains on the Muscatine faculty.

In Mississippi, Patricia Roberts is perhaps facing the most egregious situation. In November, despite her status as a tenured associate professor, she was fired both as adviser to the student newspaper *The Delta Statement* and as the only professor in the school's journalism department.

The problems, said Roberts, who spent nine years as the faculty adviser to the *Delta Statement*, began on October 31, when the students wrote about a free speech lawsuit filed against the university by a faculty member. Over the next few weeks, Roberts, said, Delta State University President Bill LaForge cut the newspaper's $10,000 printing budget, voted not to renew Roberts' contract and decided to eliminate the school's entire journalism program.

In three signatures, she said, LaForge eradicated journalism at Delta State, which was one of only three public universities in Mississippi to offer journalism degrees.

"You really can't be worse than this," LoMonte said of the Mississippi situation. "You not only eliminate an adviser's job, but you eliminate an entire academic discipline to punish the student newspaper."

The university insists the cuts had nothing to do with the aggressive reporting of Roberts' students, but rather were part of an emergency $1 million budget reduction. LaForge also cut two other programs—communication/theater studies and modern foreign languages.

Roberts believes the cuts were meant to silence the students. "The Mississippi Press Association offered to give the university $10,000 to keep the paper printing," said Roberts. "But they (the university) rejected the offer. That shows you this had nothing to do with money."

"They are camouflaging it as a money saving technique," LoMonte said. "But nobody believes that. Everybody knows it's punitive for the newspaper's content."

Roberts, who has letters of support from the Society of Professional Journalists, the Mississippi Press Association, the Southeast Journalism Conference, the Student Press Law Center and several local media outlets has appealed the firing and insisted, "I will go down with my ship."

One positive—the only one, really, she said—is the way the cuts and her firing have galvanized her students. "It's made the students want journalism more. It has early on called them to a situation that seems like a textbook press issue problem. It's become real to them. So they are more engaged that ever," Roberts said, adding, " I actually think it's enhanced their education, as sad as it is."

After the president cut their program and fired Roberts, Delta State students hired a hearse, brought in ashes and an urn and held a funeral, complete with eulogies, for their axed program and 83-year-old student newspaper. The paper will continue as an online site.

Reed's students at *The North Wind* also showed gumption and voiced their discontent in writing. The April 9 edition of *The North Wind*—the first issue to come out after Reed's April 3 firing—announced the death of the First Amendment in somber black lettering that fills the front page of the paper. Reported in: *College Media Review*, May 14.

Lawrence, Kansas

College students should be protected against disciplinary sanctions for purely off-campus behavior on social media, free-speech groups told the Kansas Court of Appeals in a case involving a college student expelled for crude insults posted to a personal Twitter account.

In the case of *Yeasin v. University of Kansas*, the university expelled petroleum engineering student Navid Yeasin on the grounds of violating a university order against contacting his former girlfriend, who had a restraining order against him because of past dating violence. The university found that Yeasin violated the no-contact order when he posted insulting, profane remarks venting about his "crazy ass ex" on Twitter, even though the account was non-public and his ex-girlfriend was blocked from directly viewing it. None of the posts indicated that Yeasin contemplated violence.

Attorneys for the university argue that the speech was punishable because it constituted a "true threat" and because the university has a duty to prevent gender-based harassment to comply with the federal Title IX anti-discrimination law. But in September 2014, a Kansas district court judge disagreed and found that the university had overreached because it punished Yeasin under disciplinary rules that apply only to on-campus behavior. The university is appealing to the Kansas Court of Appeals.

In a friend-of-the-court brief, the Student Press Law Center and the Foundation for Individual Rights in Education argue that college disciplinary authorities cannot disregard First Amendment boundaries by arguing that violating the Constitution is necessary to keep the university in compliance with Title IX. The brief also argues that the university's position—that name-calling on social media can be a "true threat"—is inconsistent with the Supreme Court's narrow understanding of threat speech and would risk criminalizing everyday social disagreements.

"While Mr. Yeasin is far from a 'model citizen' and deserves to be amply punished for genuinely violent or threatening behavior, defense of the First Amendment often requires defending the speech of distasteful speakers with whom we'd prefer not to associate, such as the Westboro Baptist Church's anti-gay protestors. Just as the Supreme Court told us that the government may not punish the speech of anti-gay religious demonstrators to silence their message, there are boundaries that public universities cannot not cross if students are to be safe from disciplinary overreactions," said attorney Frank D. LoMonte, executive director of the Student Press Law Center.

"This case provides an opportunity for the Kansas courts to recognize some rational stopping point where college punitive authority cannot follow students into their off-campus lives. While Mr. Yeasin's speech addresses matters of purely private concern, a ruling that gives universities punitive authority over off-campus social media speech equivalent to their on-campus regulatory authority would be extraordinarily dangerous for whistleblowers and journalists," LoMonte said. "Social media increasingly is where news coverage is being delivered, and because colleges at times aggressively censor speech in the on-campus media outlets they subsidize, there must be some uncensored platform that is beyond the shadow of university punitive authority." Reported in: splc.org, June 9.

Baton Rouge, Louisiana

Louisiana State University has fired a tenured professor on its Baton Rouge campus against the advice of a faculty panel, raising new questions about the administration's respect for shared governance and faculty rights.

The Louisiana State University system's Board of Supervisors voted to uphold the firing of Teresa Buchanan, an associate professor of curriculum and instruction, based on accusations she had engaged in sexual harassment and violated the Americans With Disabilities Act.

F. King Alexander, the system's president, had called for Buchanan's dismissal even though a faculty panel that he had appointed to hear her case concluded that the ADA charges against her were unsubstantiated and that she did not deserve to lose her job over the sexual-harassment charges. The latter allegations stemmed mainly from complaints that she had used obscene language in front of students and had spoken disparagingly to them about the sex lives of married people at a time when she was going through a divorce.

Buchanan's termination occurred as the Baton Rouge campus entered its third year under censure from the American Association of University Professors for its treatment of other faculty members, and at a time when colleges' efforts to protect students are bumping up against professors' free-speech and due-process rights.

Buchanan, who had spent twenty years on LSU's faculty training teachers to work in early-childhood education, said that she planned to sue the university for wrongful dismissal. In doing so, she said, she hoped to send a message "about there being some sort of consequence for the university for treating someone like that."

Kevin L. Cope, president of Louisiana State's Faculty Senate, said he was alarmed by the university's decision not to follow the recommendation of the faculty panel that had weighed the charges against Buchanan.

"This actually shows a weakness not only in our procedures, but in the procedures of most universities," where such panel's conclusions amount only to recommendations, he said. He argued that universities such as his own needed to reconsider policies that do not hold such panels' findings to be binding.

Cope also said his institution needed to reconsider its sexual-harassment policy in light of administrators' decision that Buchanan had run afoul of it by using obscene language and making generalized comments about sex. "We need to sharpen some of our definitions so we don't have the linguistic equivalent of mission creep," he said.

Buchanan's case began in December 2013, when her dean informed her that she was being removed from her teaching duties pending an investigation into complaints leveled against her by a student and by Superintendent Edward Cancienne Jr., of the Iberville Parish School System, where she helped place and oversee teachers in training. Both had accused her of using inappropriate language in her work with the system's teachers and her own students. Cancienne had gone so far as to ban her from working in his school district.

The university's human-resources office ended up accusing Buchanan of violating sexual-harassment policies with comments that included obscene language, sexual stereotypes about men, a warning to a female student about how men lose interest in relationships, and joking admonitions to students to use condoms to avoid derailing their academic careers. The office also accused her of violating the Americans With Disabilities Act by discussing one of her students' attention-deficit disorder in the classroom.

Buchanan said that at the time the accusations arose, "I was in the middle of a divorce. I wasn't at my best." In explaining her use of obscene language, she also said she was often hard on her own students because "I have expectations of them." She argued, however, that students should have come to her directly if they were bothered by anything she said.

The five-member faculty panel that heard her case, in March, said she had expressed some remorse but also had defended her use of such language as part of her teaching methodology. The panel also said university administrators had not given her an adequate opportunity to defend herself or to remediate her problem through training.

The panel said that Buchanan's comments had violated the university's sexual-harassment policy, but found that being put through a hearing process amounted to "an adequate punishment given the nature and apparent infrequency of the noted behaviors." The panel unanimously urged that she be given a written censure, required to formally agree to stop using offensive language and jokes in her teaching, but allowed to stay in her job.

In an April letter announcing his decision to recommend her dismissal for cause, President Alexander told Buchanan he was responding to his human-resources office's finding that she had violated the Americans With Disabilities Act and sexual-harassment policies. He made no mention of the faculty panel's findings. LSU's board discussed her case in closed session before voting to fire her.

Buchanan said that she had been applying for jobs for a year with little success, which she blamed partly on her age, 53, and her being overqualified for many positions. In deciding to sue Louisiana State, she said, "I don't have anything to lose." Reported in: *Chronicle of Higher Education*, June 26.

New York, New York

Columbia University has a renowned department of Latin American and Iberian Cultures. It boasts a faculty of 36 professors and lecturers. In the last five years, they've produced 52 publications on topics ranging from the regional novel to medieval heresy. This year alone, they've offered 119 classes, where hundreds if not thousands of students speak Spanish (as well as other languages).

The Spanish language—written and spoken—is clearly prized by Columbia University. Unless you're a worker.

According to a petition being circulated by the Columbia Dining Workers and the Student Worker Solidarity group, the executive director of Columbia Dining, Vicki Dunn, has banned dining hall workers from speaking Spanish in the presence of students. The students don't like it. She also banned the workers from eating in the presence of the students, forcing the workers to dine in a closet instead. (That ruling was revoked.) Reported in: coreyrobin.com, April 24.

political speech

Boston, Massachusetts

The Office of Massachusetts Attorney General Maura Healey is defending the constitutionality of a state statute

that makes it a crime to knowingly lie in political campaign material—opposing civil liberties advocates, newspaper publishers, and a trend in judicial rulings that concludes such laws can have a chilling effect on free speech.

Facing a constitutional challenge for the first time, the state's campaign law was debated before the Supreme Judicial Court May 7 during arguments in a case brought by a woman facing jail time for circulating inflammatory campaign mailers before last November's election.

The target of those mailers, state Representative Brian Mannal, a Barnstable Democrat, brought a criminal complaint against the woman, saying her false campaign claims intentionally defamed him. But she—and the super PAC she was representing—counter-sued and sought to overturn the law on constitutional grounds.

Assistant Attorney General Amy Spector plans to stand by the decades-old state law, which says no one can knowingly publish false statements to try to steer a vote for public office. The statute is aimed at protecting the integrity of the political process, according to the commonwealth's brief. And, she argues, it's appropriately narrow, affecting only falsehoods that are intentionally made; fraud and defamation are not constitutionally protected, she noted.

But the American Civil Liberties Union and media groups took the opposite tack, filing *amicus* briefs arguing the statute is patently unconstitutional and inhibits political discussion. Courts have unanimously overturned laws governing false campaign speech in recent years, following the Supreme Court's 2012 decision in *United States vs. Alvarez*, they argued.

"The statute impermissibly restricts the free speech rights of speakers in the Commonwealth, much like similar statutes in Minnesota, Ohio, and Washington struck by courts in recent years," said the brief from a group led by the New England First Amendment Coalition. "Regulating false speech in the realm of elections, where free speech rights have their highest import, impermissibly allows the government to become the arbiter of political and social discussion."

"I think it's surprising that the state is defending the law," said Justin Silverman, executive director of the New England First Amendment Coalition. "It's clearly vague and could have some repercussions and effects on the press."

A key question, Silverman added, is who decides what information is accurate in the heat of a campaign. "Do you have the government step in and be an arbiter of the truth and determine what's false or not? Or do you, as we firmly believe, allow those ideas to go into the marketplace and have the public determine what information they need. That's not a new thought. That's a principle that's behind much of the First Amendment."

The case originated on Cape Cod, where flyers lambasted Mannal, an incumbent legislator, for sponsoring a bill involving sex offender rights. The bill would have notified indigent sex offenders of their right to a public defender at a review hearing before the Sex Offender Registry Board.

The flyers, mailed out by the Jobs First Independent Expenditure Political Action Committee, accused Mannal of "putting criminals and his own interest above our families," and "helping himself," since he had also done work as a public defender. Mannal, however, had never represented sex offenders before the board, and is not certified to do so, he said.

The legislator, who was reelected in November, pursued a criminal complaint against Jobs First treasurer, Melissa Lucas. They counter-sued and sought a ruling that would stay the charges against her in Falmouth District Court and overturn the state law.

The attorney general's office is arguing that the court should dismiss the charges on statutory grounds without considering the constitutionality of the law, because the statute doesn't apply in this case; the statements in question in the flyer "are not fact statements, but rather are opinions, to which the statute does not apply," the brief states.

However, if the court takes on the constitutional issue, it should uphold the statute, the attorney general's office argues, noting that the statute only covers fraud and defamation, which the U.S. Supreme Court has repeatedly found are not protected by the First Amendment. Since the statute states that only those who "knowingly violate" it can be punished, it presents an even higher legal threshold than the "actual malice" required to prove defamation of public figures, the brief states.

Though Mannal argued he had never represented sex offenders—one basis for his case—the attorney general wrote that it could be interpreted differently. Perhaps he could begin representing them; or his caseload would increase when attorneys who do represent sex offenders got busier; or he could win political support from the defense bar for his efforts.

While he was gratified that the attorney general intends to defend the law, Mannal said he was surprised she challenged his case on other grounds. "Many commentators had suggested that the law may be found unconstitutional, but they never doubted that defamatory and false nature of the statements," he said. "Interestingly enough, the AG's office seems to question the factual nature of the statements but finds the statute constitutional."

He maintains that he was wronged in campaign season in a way that is not protected by the Constitution. "I don't think that the newspapers or bloggers have anything to truly fret about—unless it's their intention to use lies to steal elections," he said.

Still, the attorney general's office pointed to other Massachusetts cases in which defamation claims have been

(continued on page 135)

success stories

libraries

Toronto, Canada

A 2012 thriller will remain on Toronto library shelves despite a complaint that the film is "disturbing and implausible." The film was one of five items that library patrons asked to be pulled in 2014. The list of library materials for reconsideration was part of a document presented at the library board's monthly meeting May 25 along with the action taken following the request.

Compliance, which stars Ann Dowd, Dreama Walker and Pat Healy, was inspired by the true story of a McDonald's waitress who was stripped and abused as part of a prank. The 2012 film has a rating of 7.5 out of 10 on film review site Rotten Tomatoes, but at least one Toronto viewer didn't appreciate its plot.

The library user asked the TPL to remove the movie from its collection, calling it "disturbing and implausible." In February 2014, the complainant wrote to library staff that the film depicts men and women as unintelligent and willing to facilitate sexual abuse. After an investigation, library staff decided to keep the movie on the shelves because most reviews had been positive.

"Critics agreed that the film was difficult to watch but that the message was important and timely," the library report said.

Also on the list was a book called *Zheng Jiu Wang Yin Shao Nian (Save Internet-Addicted Children: 48 Ways to Guide Children in Proper Internet Use)*, by Huafang Cui. Last August, a library user asked that it be removed from the collection, and recommended the library "take more care that similar books are not purchased." The complainant wrote that the book "incites hatred" against those who practice Falun Gong, a combination of meditation and exercises that draws from both Buddhism and Taoist tradition.

Upon investigation, library staff wrote that a translator was hired. The translator reported that the book aims to provide parents with strategies to navigate the Internet with their children. One of the scenarios is a boy telling his father he's going to die by suicide based on the teachings of a Falun Gong website. Falun Gong is referred to as an "illicit organization," the translator said.

The library wrote: "According to both Amnesty International and the U.S. State Department, the Chinese government has a history of abuse of Falun Gong members and the negative depiction in the book reflects this view. The publisher of the book is state owned."

Ultimately, reviewers decided that the reference was "inaccurate and misleading" in a book described as a parental guide to Internet use. They decided to remove the book from the general collection to the Toronto Reference Library.

The library also fielded a complaint about the 2014 movie "Camp Harlow," starring Aj Olson, Monique Hurd and Andrew Dwyer. The complainant said that the movie's packaging didn't reflect its religious content, and complained that its plot suggested joining the Baptist Church was the "best way to overcome struggles."

The movie was moved from the children's DVD section to the adults section because library staff agreed that the subject of a teenager's religious conversion is complex and so was not suited for young children.

Visitors to the library also requested two Chinese children's books, *Cheng Shi Zhen Quing Hui Ben* and *Shui Na Zou Wo De Liu Liu Qui*, be removed from the collection due to grammatical errors. The library decided to remove the first book, saying it contained errors that would make it difficult for reader comprehension, but kept the second on shelves because they felt the language was appropriate for being read aloud. Reported in: CTV News Toronto, May 27.

schools

Brunswick County, North Carolina

Brunswick County Schools rejected a grandmother's second challenge to the book *The Absolutely True Diary of a Part Time Indian*, by Sherman Alexie. The rejection was due to timing: Appeals to a book the school board has previously ruled on will not be considered for two years.

West Brunswick High School Principal Brock Ahrens told Frankie Wood her challenge was ineligible for reconsideration in a letter, citing the school board's book

challenge policy, which was revised March 31. Wood, whose grandson will attend West Brunswick High School next year, first challenged the book last year. She renewed her attack in April and asked that the book be removed from West Brunswick High School's library and curriculum.

In her latest petition, Wood said the book portrays bestiality and is pornographic. She then delved into the dangers of giving pornographic literature to children, saying it could lead students to emulate pornographic behavior and they may become addicted to pornography later in life as a result of their early exposure to it.

Wood was not disheartened by the decision. In fact, she said she achieved her objective with her latest challenge—to inform parents about the book. "This was my way of letting parents know these books are in the school system," she said. "I was not disappointed. I knew they (the school system) wouldn't take it out, but I wanted to let people know they had the choice to not let their children have these filthy books. The only way to get in touch with them is through news media."

In Wood's first challenge, she cited the book's references to sexual behavior, vulgar language, racism, bullying and violence as her reasons for banning it. Ultimately, the decision on the book went all the way to the school board. The board approved the book's presence in school libraries as well as the curriculum.

Then-superintendent Edward Pruden said the book is appropriate for teen readers because "these troubling issues are already being faced by today's teens." And instead of promoting "undesirable behaviors," the book casts them in a negative light and provides readers "coping skills and hope for dealing with these tough issues in their own lives." Reported in: Star News Online, April 28.

Clovis, California

A Native American student wore an eagle feather that he considers sacred to his high school graduation ceremony June 5 after resolving a court fight with a California school district.

Christian Titman, clad in blue with his fellow graduates of Clovis High School, marched into the stadium at sunset, his long braid with the eagle feather attached came out one side of his cap while the traditional graduate's tassel hung over the other side. His presence—and the feather's—at the ceremony came after a last-minute deal with the Clovis Unified School District, which sought to enforce the strict graduation dress code that had previously led it to deny stoles, leis, rosaries and necklaces on other students.

The 18-year-old is a member of the Pit River Tribe, which considers eagle feathers sacred and symbolic of a significant accomplishment, and he said the district was violating his rights to freedom of expression and religion under the California Constitution.

The case went to court before the sides agreed that Titman could wear the feather in his hair and attach it to his cap for the traditional tassel turn. The American Civil Liberties Union, which represented Titman in the lawsuit, issued a statement congratulating him on graduating and "proudly displaying an eagle feather."

"His determination to advocate for what is right has inspired us all," the ACLU said. "Half his senior class wants to take pictures with him after what happened," said his mom, Renee Titman.

She said that the school district had granted a dress-code exception for his long hair after he enrolled, and she had thought it would do the same for the feather.

In a letter to Titman's attorneys in May, Superintendent Janet Young said the district's graduation dress code was intended in part to avoid "disruption ... that would likely occur if students were allowed to alter or add on to their graduation cap and gown."

Tara Houska, a tribal rights attorney in Washington, D.C., said fights over eagle feathers come up every year around graduation time and show the need to educate people about Native American culture. "Just like the hijab or yarmulke, this is something that is intrinsic to the religion," she said. "This isn't just a symbol or something that is an individual fashion choice." Reported in: talkingpointsmemo.com, June 5.

Hillsborough, North Carolina

Parents dropped their complaints over a gay fairy tale read to an Efland elementary school class, and Orange County Schools officials have canceled a public meeting on the complaints. The two complaints were withdrawn after teacher Omar Currie and Vice Principal Meg Goodhand resigned from Efland-Cheeks Elementary School.

The parents complained after Currie read *King & King* to his third-graders in April to deal with a case of bullying. The parents said the book was inappropriate for children that age, and at least one said parents should have been notified in advance.

Currie said he resigned because he felt administrators did not support him after he read *King & King*, in which two princes fall in love and get married. He has said he read the book after a boy in his class was called gay in a derogatory way and told he was acting like a girl. "I'm just disappointed," he said. Administrators criticized him for an interview he did on school grounds and told him he might have violated student privacy rules, even though he has not named the student, he said.

A school review committee upheld the use of the book twice. But Principal Kiley Brown told Currie that teachers would have to submit a list of all books they read to parents. Goodhand gave Currie the book and spoke on his behalf at a school meeting.

Efland-Cheeks Elementary officials upheld the book in April after an initial complaint and ruled again in May that the book was appropriate after fielding questions from angry parents during a community meeting.

The parents appealed the matter to Orange County Schools officials, where a district committee had been evaluating the book in light of curriculum goals. Because the complaints have been withdrawn, that process has ended, and the school's decision on the book stands, officials said. Reported in: *Raleigh News-Observer*, June 15; wral.com, June 18.

colleges and universities

San Bernardino, California

San Bernardino Community College District Chancellor Bruce Baron has said the district will not require instructors to place disclaimers on their course descriptions in the wake of a protest by a student in June. Initially, Crafton Hills College President Cheryl Marshall said professor Ryan Bartlett, whose course in fiction included graphic novels that upset one of his students, would include a disclaimer about the material in his course syllabus in the future. Baron said that likely will not happen.

"We have determined we are not going to a disclaimer," Baron said. "At first, President Marshall thought that would be the right thing to do." That decision was changed after subsequent conversations with faculty and educator groups, Baron said.

The conflict began in mid-June. News reports said Tara Shultz, 20, of Yucaipa, protested along with her parents and a few friends. Shultz reportedly found material in four graphic novels—illustrated books—that were included in Bartlett's course to be offensive. Shultz called the highly acclaimed books—*Persepolis*, *Fun Home*, *Y: The Last Man Vol. 1*, and *The Sandman Vol. 2: The Doll's House*—"pornography" and "garbage," and said that ideally she would like to see them "eradicated from the system. I don't want them taught anymore."

Her father, Greg Shultz, 54, backed her complaint. He said he found the illustrated books to be pornographic in their depictions of sex, nudity and violence. He said they depicted "lesbian oral sex, suicide, homosexuality, pedophilia—a boy wanting to have sex with every young girl he can find—murder, torture—and by torture I mean, gouging out eyeballs and cutting off limbs—kidnapping (and) imprisonment."

Shultz said he considered the presence of vulgar language in the books also to be offensive and unnecessary. He made it clear he didn't think such books should be banned, but he doesn't think they have a place in a college curriculum.

"I don't know why we would teach this," he said. "Our daughter had to read this to get a grade."

Baron said he was not personally disturbed by the books in question, which included works by well-known authors Neil Gaiman and Alison Bechdel. "I went to Barnes and Noble to look at the books myself. These are very popular works, award-winning works, again not for every taste. In my opinion they do have universal messages told in a very graphic way."

He said he had never dealt with a similar student complaint during his 40 years in education.

In recent days, the conflict at the small college has gained national attention. The National Coalition Against Censorship sent a letter to Marshall urging her not to include disclaimers on any courses at the school.

"We are concerned about all such warnings because we believe they pose a significant threat to the methods and goals of higher education," said the letter signed by representatives of seven organizations devoted to academic freedom. The letter said such "trigger" warnings "threaten not just academic freedom, but also the quality of education students receive."

Joan Bertin, executive director of the NCAC, said she is aware of only four colleges across the country that require such disclaimers, though there may be more. "We know this is a phenomenon that is out there," Bertin said. "We don't know how widespread it is."

Bertin said she doesn't think there is anything wrong with a college instructor providing detailed information on the materials that might be covered in a course. But she doesn't believe disclaimers or warnings are ever appropriate because they affect how students read the material. "It takes content out of context," she said.

Baron said it will be up to faculty members themselves whether to create any standing policy on the description of materials or disclaimers. Since most instructors are on summer break, he doesn't expect any discussion on the issue until the fall semester begins. Reported in: *San Bernardino Press-Enterprise*, July 2.

Lakeland, Florida

Sometimes college and university leaders try to avoid the spotlight when a faculty member is under attack. Not so at Polk State College, which in May stood behind a humanities professor accused of giving students anti-Christian assignments, even as the allegations were picked up by national conservative outlets.

The college's leaders said the case raises important issues for professors' rights in the classroom and for academic freedom. And so when Fox News and conservative bloggers ran critical items about the professor, the college reached out to tell another side of the story.

"The overall fallacy of your position rests singly on the premise that that an instructor should not require a student to consider, discuss or present arguments that are contrary to his/her personal beliefs," lawyers for Polk State wrote

in their response to a complaint filed by Liberty Counsel, which is dedicated to "restoring the culture by advancing religious freedom, the sanctity of human life and the family," according to its website.

The complaint alleged that Lance Russum, a humanities professor, discriminated against a 16-year-old dual enrollment student in his Introduction to Humanities class by failing her on specific assignments based on her Christian beliefs and through his otherwise "pervasive, anti-Christian bias." (The student received an A overall in the course. And she didn't so much have her ideas rejected as she declined to answer the questions on the assignments in question.)

Moreover, Polk State's general counsel wrote in the response, "Your only substantive allegation with a connection to the college is that the professor allegedly discriminated against your student when he gave her zeroes on four essay assignments. . . . Your entire letter, which is based upon this hollow and indefensible allegation, legally fails to establish any claim against either the college or its employee."

Liberty's complaint related to Grace Lewis, a high school student enrolled at Polk State through the Florida Virtual School Full Time program. (The complaint refers to Lewis by the letters "G.L.," but she has since publicly disclosed her name.) Liberty alleged that Russum is a "radical ideologue, bent on imposing his views on students, in violation of acceptable academic standards and the U.S. Constitution." As evidence, it cited multiple elements of the syllabus and assignments for the online introductory humanities course, including Russum's notes that "What we take to be the 'truth' is just the retelling of the myths of early civilization. The god [sic] of Christianity/Islam/Judaism are [sic] a mixture of the god(s) myths of the Mesopotamians. . . .The point of this is not to 'bash' any religion, we should NEVER favor one over the another, they all come from the same sources, HUMAN IMAGINATION" [emphasis Russum's].

The complaint also cited Russum's introduction to the ancient epics, which highlights "elements of homoerotic/friendship, raw human sexuality" and "the use of sexuality and the role of women." Liberty says that Russum also tried to "deconstruct the Bible by claiming that the discredited position that the Egyptian Book of the Dead is the source material for the biblical Book of Samuel," for example, and that he discredited Christianity by citing the Crusades and saying that "Christianity proved itself during the Middle Ages to be one of the most violent forms of religion the world had ever seen."

The complaint alleged that Russum also "assaults the sensibilities" of his students by including a close-up image of the penis on Michelangelo's David and by highlighting other phallic and potentially homoerotic symbols in Renaissance art.

"Russum then uses Michelangelo as [a] . . . stand-in for his own beliefs about homosexuality, stating that 'in the 16th century, Michelangelo is claiming that being in a same-sex relationship is NOT A SIN and WILL NOT keep someone out of heaven,'" Liberty wrote. The complaint also took a half page to note all of Russum's Facebook likes, including various atheist and feminist groups, calling such information "compelling evidence that his course material and behavior are not merely 'pedagogical.'"

Liberty charged that Russum has "forfeited his academic integrity" and should be fired. It demanded a full and independent review of Russum's behavior and course content, and that he offer Lewis an apology. It also calls for "appropriate grading" of Lewis's failed assignments by a different professor and assurances that future courses taught by Russum will be free of "such unlawful discrimination."

The complaint offered very little information on the failed assignments, and the college said it was limited by federal student privacy laws about how much it could say about Lewis's work. But Polk State's legal response said that while Lewis was a strong student when she was on task, she failed entirely to address the question at hand in 4 of 15 essay assignments that together counted for 40 percent of the class grade (a final assignment counted for 60 percent). Several other faculty members independently concluded the same, the school said.

Breitbart.com, which picked up the story, sympathizing with Lewis's complaint, posted what it says is Lewis's assignment. Although lengthy and well documented, the response appears to critique Russum's questions about nuns in the 15th century rather than answer them.

A spokesperson for Liberty later claimed that it didn't believe Lewis would have gotten an A on her assignment had it not intervened on her behalf. The college said that the letter had no bearing on Lewis's grade.

Russum said in an interview that he has "such gratitude for the way in which [the college has] rallied around the idea of academic freedom. It's just a testament to what Polk State stands for—diverse people with diverse beliefs being heard."

Donald Painter, dean of academic affairs, said students' safety and comfort were "paramount," but that once faculty and administrators had carefully determined that neither had been compromised, they turned their attention to preserving the integrity of the "academic process."

"I think we deal with controversial, sensitive and hot-button issues, and I fully respect that in talking about them in an academic context people may feel a little raw about it, and it may touch on their values—I have great respect for that," Painter said. "At the same time, it's important that we have the ability to freely inquire about these subjects and discuss them, as in, 'We know this is the popular worldview, so let's look at the other perspectives.' That's at the core of what we do."

He added, "That's what higher education is about. We can reach new conclusions and new knowledge as result of that."

Although he'll face no disciplinary action as a result of the complaint, Russum is still facing blowback from the public, since various blogs have run pieces about Lewis's case, and she appeared on Fox and Friends. The title of the segment was "Student: Professor Gave Me Zeros for Refusing to Condemn Christianity."

"Students shouldn't be afraid to believe in faith," Lewis told Fox. "Dropping the class would have been good for me, but it wouldn't have been good for the students coming behind me. . . .This is not what education should be."

Russum said he's received hate mail, some of it homophobic and anti-Semitic, and even a physical threat from those outside the college. Being judged so harshly and in some cases hatefully by people who don't know him or the kind of teacher he is has been emotionally draining, he said.

"I want my students to have their own thought processes challenged, not give up their beliefs or some of the other things that I've been accused of," he said. Of all the names that have been tossed at him, Russum added, "the only one I'm going to own is feminist. I don't identify as an atheist, but I am going to own that one and that's why I do include questions about things such as nuns in the Middle Ages."

Painter said the college was managing public feedback to Russum, and that he encouraged all interested parties to read all they could about the case to make informed opinions. Reported in: insidehighered.com, May 8.

Evanston, Illinois

Laura Kipnis, a Northwestern University professor who became the subject of two Title IX complaints after publishing an essay in *The Chronicle Review*, has been cleared of wrongdoing by the university under the federal civil-rights law, which requires colleges to respond to reports of sexual misconduct.

Kipnis said that she received two letters May 29 from the law firm Northwestern had hired to investigate both complaints. In each case, the firm judged that the "preponderance of evidence does not support the complaint allegations."

In the *Review* essay, published in February, Kipnis decried a prevailing "sexual paranoia" on college campuses. She alluded to Peter Ludlow, a professor of philosophy at Northwestern who has been accused of sexual misconduct by students in two separate instances. Shortly thereafter, two graduate students filed complaints against Kipnis with Northwestern's Title IX coordinator, arguing that the professor's piece had misrepresented and impugned one of Ludlow's accusers and had had a "chilling effect" on students' ability to report sexual misconduct.

Kipnis, a professor in the department of radio, television, and film, detailed the investigation that followed in another Review essay, published May 29. "What I very much wanted to know," she wrote, "was whether this was the first instance of Title IX charges filed over a publication."

The complainants had ten days to appeal the Title IX decisions, and Northwestern has yet to rule on whether Kipnis's first *Review* essay violated a nonretaliation provision of the faculty handbook. (Kipnis declined to discuss other details of the law firm's findings, saying she was free to disclose only the overall outcomes of the complaints.)

Meanwhile, debate over the episode continues. In a post on the philosophy blog Daily Nous, Justin Weinberg, an associate professor of philosophy at the University of South Carolina at Columbia, took issue with Kipnis's portrayal of the Title IX cases as overreach. "It turns out that the process she had been demonizing—which of course may have its flaws—pretty much worked, from her point of view," Weinberg wrote.

Kipnis said she had been "pretty inundated" by email messages since the publication of the second Review article. "Most people seem to be pretty amazed and perturbed," she said.

More broadly, the professor said, the investigations have made her examine issues related to Title IX and academic freedom more closely than when she wrote the February piece that set off the firestorm. "I do feel a bit more of an activist than I was," she said. Reported in: Chronicle of Higher Education online, May 31. □

Freedom Act . . . from page 87

The fight for the changes was led largely by Democrats and a new generation of Republicans in the House and the Senate who were elected a decade after the terrorist attacks. Even as threats have multiplied since then, privacy concerns, stoked by reports of widespread computer security breaches at private companies, have shifted public opinion.

"National security and privacy are not mutually exclusive," said Senator James Lankford, Republican of Oklahoma, a freshman who like several other younger Republicans voted against the senior senator from his state. "They can both be accomplished through responsible intelligence gathering and careful respect for the freedoms of law-abiding Americans."

The vote was a rebuke to Senator Mitch McConnell, Republican of Kentucky and the majority leader, who, until the end in a bitter floor speech, maintained the bill was a dangerous diminishment of national security. Lawmakers in both parties beat back amendments—one by one—that he insisted were necessary to blunt some of the bill's controls on government spying.

McConnell blasted his fellow senators—and by association House Speaker John A. Boehner, who heartily endorsed the measure—as taking "one more tool away from those who defend our country every day."

"This is a significant weakening of the tools that were put in place in the wake of 9/11 to protect the country,"

he said. "I think Congress is misreading the public mood if they think Americans are concerned about the privacy implications."

But even scores of senators who loathed the actions of Snowden voted for the legislation.

The legislation's goals are twofold: to rein in aspects of the government's data collection authority and to crack open the workings of the secret national security court that oversees it. After six months, the phone companies, not the NSA, will hold the bulk phone records—logs of calls placed from one number to another, and the time and the duration of those contacts, but not the content of what was said. A new kind of court order will permit the government to swiftly analyze them.

The Foreign Intelligence Surveillance Court, for the first time, will be required to declassify some of its most significant decisions, and outside voices will be allowed to argue for privacy rights before the court in certain cases.

The battle over the legislation, the USA Freedom Act, made for unusual alliances. Boehner joined forces with Obama, the bipartisan leadership of the House Judiciary Committee, and a bipartisan coalition of senators against McConnell and his Intelligence Committee chairman, Senator Richard Burr, Republican of North Carolina.

McConnell made a series of miscalculations, stretching back to last year, when he filibustered a similar surveillance overhaul measure. Last month, after Republicans blocked consideration of the Freedom Act, McConnell sent the Senate on a weeklong Memorial Day recess, pushing Washington up against a June 1 deadline, when surveillance authority would lapse.

That empowered Sen. Paul, who promised supporters of his presidential campaign that he would single-handedly ensure that surveillance authority lapsed, a promise on which he delivered. When McConnell then argued in favor of amending the Freedom Act, senators in both parties—even some who supported him—said any changes would only extend the surveillance blackout and risk the country's security.

McConnell dragged senators back for an unusual Sunday session, only to end up with the very bill he tried to kill.

"This should have been planned on over a week ago," said Senator Bill Nelson, Democrat of Florida, who had backed McConnell's efforts but found his timing untenable.

In a heated meeting of House Republicans June 2, one of the architects of the post-September 11 USA PATRIOT Act, Representative Jim Sensenbrenner of Wisconsin, angrily told Senator John Barrasso of Wyoming, an emissary from the Senate leadership, to deliver a message to his colleagues: Any change to the House bill would be flatly rejected.

About a dozen Republican senators—most of them recent House members—took the warning to heart, joined Democrats and voted down all of McConnell's proposed changes.

As the debate over the bulk phone records program unfolded, supporters and opponents both trotted out worst case scenarios to make their argument. Opponents warned that the government could root through the records to learn who was calling psychiatrists and political groups, while supporters said ending it would lead to terrorist attacks on the United States.

Neither of those warnings was supported by how the program had performed in its nearly 14 years of existence. Repeated studies found no evidence of intentional abuse for personal or political gain, but also found no evidence that it had ever thwarted a terrorist attack.

Still, the debaters on each side also made other points. Opponents said that the mere collection of Americans' calling records by the government was a privacy violation and that it risked being abused in the future. Supporters said it had helped flesh out investigations in other ways, and could still prove to be crucial in the future.

Senator Mike Lee, a Utah Republican, and Senator Leahy made it clear after passage that curtailing the phone sweeps might be only the beginning. The two are collaborating on legislation to undo a provision in the Electronic Communications Privacy Act of 1986 that allows the government to read the contents of email over six months old. House members and senators from both parties are already eyeing a section of the Foreign Intelligence Surveillance Act that they say has also been abused by the government.

But opponents of the law said they imagined further fights going forward for their positions, too. Senator Susan Collins, Republican of Maine, said she and others would continue to seek reforms and oversight.

"It's not the end," she said. Reported in: *New York Times*, June 5. □

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censorship dateline . . . from page 100

organizers put a red "censored" stamp-like image, which did not originally appear on the *Charlie Hebdo* cover.

They discussed the possible negative impact of publishing a picture of Muhammad on the flyer, given the prohibition against physical representations. But the organizers decided that doing so was appropriate for the event on free speech, according to a university account, and might also lead to more Muslim students attending. The flyer was published on the various unit sponsors' websites and elsewhere on campus.

By panelists' accounts, the event was a success, stirring debate about the limits, if any, of free speech in light of the events at *Charlie Hebdo*. Not everyone agreed with the speakers, and several audience members pointed out that the panel did not include a Muslim. But the conversations remained principled, if at times impassioned.

"The forum achieved its purpose," said Beeman, the anthropologist. "It was not heated and most people thought it was quite valuable. . . . This is part of our role as educators, to help students and the public as well understand the full context of these sorts of controversies."

Kirtley, the media law scholar, described the event as standing room only, with "lively discussion" that was "not remotely hostile—there was no one complaining and there were quite a few students who self-identified as Muslim." Audience members and panelists continued to talk informally long after the scheduled end of the event.

So panelists were surprised to learn weeks later that complaints had been filed with the university's Office of Equal Opportunity and Affirmative Action. The complaints were targeted at Chaouat and Prell as organizers, and referred not so much to the event itself as the poster advertising it.

According to a summary of the office's investigation prepared for John Coleman, dean of the liberal arts, eight people—four students, a retired professor, an adjunct professor and two others from outside the university—contacted equal opportunity personnel to express concern that the flyer "featured a depiction of Muhammad, which they and many other Muslims consider blasphemous and/or insulting."

The fact that "*Charlie Hebdo* originally created the image of Muhammad added to the insult, because [the magazine] has previously printed cartoons deliberately mocking Muhammad, including some depicting Muhammad naked and in sexual poses," the summary continues. "This led some complainants [to] conclude that the [college or cosponsoring academic units] and the professors involved in organizing and promoting the event do not care about Muslims on campus."

The office also received a petition signed by about 260 Muslim students, several staff members and about 45 people with no affiliation with the university. The petition says, in part, that the flyer is "very offensive" and has "violated our religious identity and hurt our deeply held religious affiliations for our beloved prophet (peace be upon him). Knowing that these caricatures hurt and are condemned by 1.75 billion Muslims in the world, the university should not have recirculated/reproduced them."

Equal opportunity administrators conducted a formal investigation based on the complaint, including interviews with the event organizers. According the investigation summary, organizers "collectively reported that they chose to reprint the *Charlie Hebdo* image to express a commitment to the future of [the magazine] and to free speech generally, to condemn terror and to show Muhammad expressing love and compassion." Moreover, organizers said, the image already had been published by news organizations worldwide. They also expressed a belief that "their dissemination of the flyer is protected speech under the First Amendment and principles of academic freedom."

Ultimately, the office determined that the poster did not violate the university's anti-harassment policy, which prohibits discrimination on the basis of religion. Factoring into the decision was the poster's relevance to academic subjects and its general commentary on a matter of public concern.

However, the office said in its summary for the dean, the poster had "significant negative repercussions." And given the "large-scale" global protests against the image in question, "the organizers knew or should have known" that their decision to reprint the image "would offend, insult and alienate some not-insignificant proportion of the university's Muslim community on the basis of their religious identity," the office added. It said the hurt was heightened by the fact that the insulting speech came from those with "positional power" at Minnesota.

Consequently, the office wrote, "university members should condemn insults made to a religious community in the name of free speech." Equal opportunity administrators told Coleman that he had the "opportunity to lead in creating an inclusive and welcoming environment for Muslim students by adding your own speech to the dialogue advocating for civility and respect by [college] faculty." The office recommended that Coleman communicate the college's disapproval of the flyer and "otherwise use your leadership role to repair the damage that the flyer caused to the relationship between [the college] and Muslim students and community members."

Coleman received that recommendation at the end of March. What happened in the interim, as the investigation was ongoing, is somewhat in dispute. Chaouat and other panelists said administrative staff members in units that sponsored the event received an email from the university asking them to take down any remaining event posters. Some faculty members said links to the flyer on departmental web pages were broken as result. Both the content of the alleged order and the fact that the faculty organizers hadn't been copied riled some, who complained to Coleman. But Kelly O'Brien, a college spokeswoman, said the college at no point told staff members to take the posters down, and that none were taken down. Rather, she said, the college automatically shifts past event notices off current web pages and into digital archives.

According to a heavily redacted series of emails between Coleman, various faculty members and equal opportunity administrators provided to *Inside Higher Ed* by the university, staff members received a message from the college human resources office on February 13. The email included a link to the digital flyer, noting that the free speech event "took place several weeks ago." It continues: "Due to complaints about the image contained in the link, [the equal opportunity office] has requested that the image be removed from any [college] communication in all forms. If your unit still has active links to this page, or image, please remove the image. Please remove any posters on your unit bulletin

boards or any other hard copies of flyers that may be still around."

Coleman responded to various faculty concerns about censorship with a clarification letter of sorts on February 16, saying that the earlier email from human resources "conveyed that there had been complaints about the continued presence of the posters and the image and intended to suggest that removing the advertising for a past event might be a possible response to some of the complaints that had been received. Whether you decide to remove the advertisement is your call."

The dean wrote that academic freedom and free speech were "paramount values" for him personally, and that his own research in political science has often touched on those issues. That said, he concluded, "With the event now past, should [the poster] remain online, given the context of genuine hurt some individuals express about the image? The reasonable people, each an ardent free speech supporter, could hold some different views on that question, especially as it intersects with our desire to improve upon and deepen a welcoming campus climate."

The investigation came to light in an article in the student newspaper, the *Minnesota Daily*. Prell declined to answer questions about the investigation, but said the event itself went "exceedingly well."

In a brief interview, Chaouat said he feared it was possible that "terror and terrorism actually work when people have a tendency to internalize the fear of retaliation and to self-censor. . . . This is something that's happened in France after the January events—there's been a lot of self-censorship in the aftermath of the *Charlie Hebdo* attacks and I'm afraid we're on the path here as well."

He added, "In the name of tolerance and acceptance and diversity, we're actually lying to ourselves."

Beeman said he saw the events at Minnesota as part of a growing movement on college campuses "to enjoin faculty from saying anything that might hurt somebody's feelings, or that might offend someone."

For example, he said, he was teaching a course that mentioned witchcraft—a technical term in his discipline—and was approached by three Wiccans after class who said they were hurt by the term. Another student in another course on human evolution failed and then blamed her performance on the class material on race—namely that it isn't a biologically solid concept—only to take it over again and fail once more, he said. There are also increased calls for trigger warnings and big pushes to block controversial convocation speakers from appearing on colleges campuses across the country. (Indeed, in one of the redacted emails to an unknown recipient, Coleman mentions possibly publishing a trigger warning with remaining copies of the poster. "I not infrequently will come across news sites that will provide the option of seeing/hearing something that might be considered difficult for some viewers/listeners," he wrote.)

But at least in some of those cases, Beeman said, the students approached faculty members directly to voice their concerns. Beeman said he wondered if the students involved in the *Charlie Hebdo* complaint understood the weight of launching a formal investigation before first trying to remedy the situation with the parties involved. His more "cynical" side says that "students have learned that they can exercise a certain amount of power by invoking the fact that they were offended by something or insulted."

Samantha Harris, director of policy research for the Foundation for Individual Rights in Education, said she didn't have detailed knowledge of the case. But she said she was "troubled by the university [equal opportunity office's] apparent request—despite correctly finding that the posters did not constitute harassment—that [Coleman] 'voice disapproval' of the flyer."

While it would be within the dean's own free speech rights to criticize the flyer of his own accord, Harris added via email, "the university administration should not be pressuring him to be a mouthpiece for views that are not his own, particularly in light of the fact that a condemnation from the dean would likely have a chilling effect on future expression of this sort." Reported in: insidehighered.com, May 5.

Youngstown, Ohio

Posters promoting a "straight pride" week at Youngstown State University were removed in April after student leaders determined that the message went beyond free speech. Youngstown State University student government leaders told WKBN-TV they decided to remove the posters after consulting with university officials, but a FOIA request later revealed email correspondence indicating that student government leaders "were told [by university administrators] to help by taking down" the posters.

Campus leaders said that while they believe the posters were meant as satire, the message was inappropriate. "If you actually read through it, it seemed like it went way further than a free speech issue," said Student Government President Michael Slavens. "There were swear words and took it a little further than the average free speech should go."

The posters counter the school's mission to create a diverse campus, university spokesman Ron Cole said. Officials are investigating possible student code violations, and disciplinary action may follow.

In a blog post discussing the removal, UCLA law professor Eugene Volokh wrote: "The message itself is fully protected by the First Amendment, just as much as pro-gay-rights speech is protected. Speech is protected even when it runs 'counter [to] the school's mission to create a diverse campus.' Speech is protected even when it 'miss[es] the point of minority activism.' And speech is protected even when it contains vulgarities, as the famous 'Fuck the Draft' jacket case, *Cohen v. California*, makes clear. If the

university does decide to impose 'disciplinary action' based on the message expressed in the posters, that would clearly violate the First Amendment." Reported in: *Washington Post*, April 24, May 21.

art

Adrian, Michigan

An art sculpture designed to represent unity has been moved from this Michigan town, because residents thought it was meant to be a gay orgy.

"Blue Human Condition," by sculptor Mark Chatterley, was unveiled in late April near Adrian City Hall, but residents labelled it an "abomination" and referred to it as "the orgy statue." Chatterly said the sculpture was not intended to be sexual, and said its meaning was that "living today, we can't do it alone. We rely on other people . . . to try to survive."

Local pastor Rick Strawcutter said the sculpture was a perversion and an abomination, and was a sign that the town was being left to Sodom. He said: "Everybody I know who sees [the sculpture] just feels like it is in itself an abomination." A commenter on the town website said: "One cannot argue the fact that it is clearly easy to see how one (or, rather, many) would view it in that light. I believe it is very unfair and unkind to infer that those of us that do so have 'dirty minds' and are 'sexually repressed prudes'."

After the outrage, the town covered up the statue, and has since moved it to the nearby Yew Park, where it would be seen by fewer passers-by. Administrator Shane Horn said: "I recognize there are likely to be people on both sides of the issue who are not satisfied, but I believe this decision provides an appropriate resolution."

The sculpture was part of the town's public art program, one of seven works that are due to be unveiled. Reported in: *Pink News*, May 2.

foreign

Tehran, Iran

Iranian publisher Shahla Lahiji has boycotted the annual Tehran International Book Fair for the fourth year running, to protest the government's refusal to issue licenses to her publishing house.

"Since 2014, I have suggested 55 books for publication, but none of them have been issued a license. We voted for Mr. Rouhani to pay attention to the cultural situation of the country in keeping with his campaign slogans, but it seems nothing has changed, at least not in my case," Shahla Lahiji told the International Campaign for Human Rights in Iran.

The Tehran International Book Fair is the most important publishing event in Iran, and this marks the 28th year of the fair.

"Either I am an undesirable individual, or my books are undesirable," she told the Campaign. "I am sure that none of the 55 books have a problem. After all these years, I recognize the red lines and I know which books I should suggest for publication. Some of them are written by Iranian authors, and some are translated, and some of them are very important theoretical books about women-related issues," she added.

Lahiji, the first female publisher in Iran, established the Roshangaran publishing house in 1983. Her publishing house received the PEN International prize in the United States and the Pandora prize in the United Kingdom in 2001.

With more than 30 years' experience in the field of publishing, Shahla Lahiji told the Campaign that she has refused to attend the Tehran International Book Fair since 2012.

"Why should I participate, when they still ban books without any legitimate reasons? They had promised not to remove any books from the Book Fair, and not to close down any booths. But they shut down booths and banned books again. I expected these events. I gave up the good income I could have made at the Book Fair. I gave it up, so I won't be witness to such disrespect," said the veteran publisher.

This year's ten-day Tehran Book Fair opened May 7. During the first two days, ten books were removed from the exhibition and 29 booths were shut down on May 10. The Committee to Review Publishers' Violations, which was present at the fair, said the reason for the closures was "presenting and selling books by other publishers."

Among the banned books are books written by political authors and poets, and books with critical content. Also an English book entitled, *A Critical Introduction to Khomeini*, written by Afshin Adib-Moghaddam, a professor in Global Thought and Comparative Philosophies and chair of the Center for Iranian Studies at SOAS, University of London, published by Cambridge University Press, was collected and banned from the Book Fair.

Regarding the closure of 29 booths in one day, Shahla Lahiji told the Campaign, "The excuse they offer, 'presenting and selling books by other publishers,' is unacceptable. The organization that collected the books and shut down the booths was not related to the Ministry of Culture [and Islamic Guidance]. All we tell them is you should enforce the laws you have set for book publishing yourselves. When you give a license for publishing a book, why should you remove it from the Book Fair or shut down the [presenting] booth?"

Iran's Minister of Culture and Islamic Guidance, Ali Jannati, said on May 8 that all publishers are able to participate in the Book Fair this year. Stating that there were some 50 publishers who were banned from the Book Fair in 2012, Jannati added that no publishers were banned from this year's book fair.

In an interview with Mehr News Agency, Homayoun Amirzadeh, head of the Committee to Review Publishers' Violations, said on May 7 that the reason for collecting a book of poems by Fatemeh Ekhtesari was that some of the poems in the book had been used as lyrics for songs by singers outside the country.

By "singers outside the country," Amirzadeh was referring to German-based Iranian musician Shahin Najafi, who has produced music based on Fatemeh Ekhtesari's poetry. However, Alireza Asadi, head of Nimage Publishing, told the Mehr News Agency that none of the poems performed by Shahin Najafi are in the banned book. The publisher told Mehr that they are highly cognizant about observing the red lines.

Among the 29 booths shut down on May 10 were those of the Hayyan and Sobh-e-Farda publishers. Hayyan Publishers belongs to dissident blogger and former political prisoner Mehdi Khazali, and Sobh-e-Farda Publishers belongs to Ayatollah Mohammadreza Nekounam, who has been prosecuted by the Special Clerics Court, according to the Kaleme website. Reported in: International Campaign for Human Rights in Iran, May 14. □

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from the bench . . . from page 108

Such a transition period was baked into the USA Freedom Act to allow the NSA time to switch over to a more limited and targeted surveillance regime. Going forward after November, the law will allow the spy agency to request records from phone companies only on an as-needed basis after obtained approval from the FISA Court.

Acknowledging the unusual situation that finds the government again extending a controversial program Congress fought to dismantle, the Court began its opinion with a dose of French prose that translates to, "the more things change, the more they stay the same."

Former Virginia Attorney General Ken Cuccinelli was appointed to serve as a privacy consultant for consideration of the government's renewal application. The USA Freedom Act requires that the FISA Court consult a panel of privacy experts for certain cases, but that panel has not yet been constructed. In its absence, Cuccinelli was selected for this particular consideration.

Cuccinelli, a Republican who unsuccessfully ran for Virginia governor in 2013, filed a legal challenge this month with the FISA Court asking it to not grant the Obama administration's request to revive the NSA's program. That challenge, which was joined by the conservative group FreedomWorks, was rejected.

The FISA Court's order also largely dismissed a federal appeals court that ruled in May (see below) that the NSA phone records program was illegal. That opinion argued that the FISA Court had erred in its interpretation of the word "relevant" to essentially mean all Americans' call data, and that Congress never intended for the government to be able to collect records so broadly—something the bill's original author, Rep. Jim Sensenbrenner, has also stated.

"Second Circuit rulings are not binding on the FISC, and this Court respectfully disagrees with that Court's analysis, especially in view of the intervening enactment of the USA Freedom Act," the order, penned by Judge Michael Mosman, reads. "To a considerable extent, the Second Circuit's analysis rests on mischaracterizations of how this program works and on understandings that, if they had once been correct, have been superseded by the USA Freedom Act."

Sen. Ron Wyden (D-Ore.), one of the most outspoken critics of NSA spying and a leader in the Senate's push to curb the agency's bulk surveillance practices, criticized the extension. "I see no reason for the Executive Branch to restart bulk collection, even for a few months. This illegal dragnet surveillance violated Americans' rights for fourteen years without making our country any safer. It is disappointing that the administration is seeking to resurrect this unnecessary and invasive program after it has already been shut down. However I am relieved this will be the final five months of PATRIOT Act mass surveillance, thanks to the passage of the USA Freedom Act. It will take a concerted effort by everyone who cares about Americans' privacy and civil liberties to continue making inroads against government overreach." Reported in: *National Journal*, June 30.

Washington, D.C.

A federal appeals court in New York ruled May 7 that the once-secret National Security Agency program that is systematically collecting Americans' phone records in bulk is illegal. The decision came as a fight in Congress was intensifying over whether to end and replace the program, or to extend it without changes (see page 87).

In a 97-page ruling, a three-judge panel for the United States Court of Appeals for the Second Circuit held that a provision of the USA PATRIOT Act, known as Section 215, cannot be legitimately interpreted to allow the bulk collection of domestic calling records. The provision of the act used to justify the bulk data program expired June 1, but was extended for six months by the Foreign Intelligence Surveillance Court (see page 108).

The ruling was the first time a higher-level court in the regular judicial system has reviewed the NSA phone records program. It did not come with any injunction ordering the program to cease, and it is not clear that anything else will happen in the judicial system now that Congress has enacted the USA Freedom Act, which ended the bulk collection practice.

The data collection had repeatedly been approved in secret by judges serving on the Foreign Intelligence Surveillance Court, known as the FISA court, which oversees

national security surveillance. Those judges, who hear arguments only from the government, were willing to accept an interpretation of Section 215 that the appeals court rejected.

The appeals court, in a unanimous ruling written by Judge Gerard E. Lynch, held that Section 215 "cannot bear the weight the government asks us to assign to it, and that it does not authorize the telephone metadata program." It declared the program illegal, saying, "We do so comfortably in the full understanding that if Congress chooses to authorize such a far-reaching and unprecedented program, it has every opportunity to do so, and to do so unambiguously."

But the appeals court ruling raises the question of whether Section 215, extended or not, has ever legitimately authorized the program. The statute on its face permits only the collection of records deemed "relevant" to a national security case. The government secretly decided, with the FISA court's secret approval, that this could be interpreted to mean collection of all records, so long as only those that later turn out to be relevant are scrutinized by analysts.

However, Judge Lynch wrote: "Such expansive development of government repositories of formerly private records would be an unprecedented contraction of the privacy expectations of all Americans. Perhaps such a contraction is required by national security needs in the face of the dangers of contemporary domestic and international terrorism. But we would expect such a momentous decision to be preceded by substantial debate, and expressed in unmistakable language."

The White House argued that the ruling in effect validated President Obama's support for legislation taking the government out of bulk data collection and leaving the information with the telecommunications companies.

"Our team is still reviewing the details of the ruling," Eric Schultz, a White House spokesman, told reporters. "But we believe that regardless of the fine print of that ruling, that legislation is the way to go."

Judge Lynch, who was appointed by Obama, was joined in the decision by Judge Robert D. Sack, a Clinton appointee, and Judge Vernon S. Broderick, another Obama appointee. Judge Broderick usually hears Federal District Court cases but was sitting on the appeals court for this case as a visiting judge.

The appeals court sent the matter back to a Federal District Court judge to decide what to do next. The government could also appeal the ruling to the full appeals court, or to the Supreme Court. Parallel cases are pending before two other appeals courts that have not yet ruled.

Alexander Abdo, who argued the case for the American Civil Liberties Union, praised the ruling as a "victory for the rule of law that should spur Congress into action."

In a statement, Edward Price, a spokesman for the National Security Council, said the administration was still evaluating the ruling but reiterated Obama's support for legislation that would transform the program in line with the USA Freedom Act.

The bulk phone records program traces back to October 2001. After the September 11 attacks, President George W. Bush secretly authorized the NSA to begin a group of surveillance and data-collection programs, without obeying statutory limits on government spying, for the purpose of hunting for terrorist cells.

Over time, the legal basis for each component of that program, known as Stellarwind, evolved. In 2006, the administration persuaded a FISA court judge to issue an order approving the bulk phone records component, based on the idea that Section 215 could be interpreted as authorizing bulk collection.

Many other judges serving on the FISA court have subsequently renewed the program at roughly 90-day intervals. It came to light in June 2013 as part of the leaks by the intelligence contractor Edward J. Snowden.

The revelation led to a series of lawsuits challenging the program. Different district court judges reached opposing conclusions about its legality. The Second Circuit ruling did not address the ACLU's separate argument that bulk collection of records about Americans is unconstitutional regardless of any laws that support it. Reported in: *New York Times*, May 7.

Atlanta, Georgia

A federal appeals court ruled May 5 that the government does not need a warrant to obtain a suspect's cell-site location data records.

The 9-2 decision by the U.S. Court of Appeals for the Eleventh Circuit said that the records of towers that a mobile phone uses to make calls are considered "business records" maintained by a "third party" and are not protected by the Fourth Amendment. That means the government may obtain these records if it believes they are relevant to an investigation.

The case concerns a Florida man, Quartavious Davis, who was sentenced to life in prison for a string of robberies in a prosecution that was built with the suspect's cell site records. Wrote the court:

"Davis can assert neither ownership nor possession of the third-party's business records he sought to suppress. Instead, those cell tower records were created by MetroPCS, stored on its own premises, and subject to its control. Cell tower location records do not contain private communications of the subscriber. This type of non-content evidence, lawfully created by a third-party telephone company for legitimate business purposes, does not belong to Davis, even if it concerns him. Like the security camera surveillance images introduced into evidence at his trial, MetroPCS's cell tower records were not Davis's to withhold. Those surveillance camera images show Davis's location at the precise location of the robbery, which is far more than MetroPCS's cell tower location records show."

The majority ruling by Judge Frank Hull was a big boost to the government. Warrantless cell-site tracking has become among the government's preferred methods of electronically tracking suspects in the wake of a 2012 Supreme Court ruling that the authorities generally needed a warrant to attach GPS devices onto vehicles and track their every move.

Meanwhile, the Atlanta-based appeals court had ruled the opposite way last year by a vote of 2-1. But the Eleventh Circuit revisited the case with a larger panel of eleven judges at the government's request. The outcome brings the number of appellate courts that have ruled for the authorities to four. There are thirteen appeals courts nationwide. None have gone the other way. Without conflicting rulings, the U.S. Supreme Court might not take up the issue any time soon.

In all the decisions, the appellate courts cited analogaged 1979 U.S. Supreme Court precedent, known as *Smith v. Maryland*, that allows the government's telephone metadata snooping program that Edward Snowden exposed.

Orin Kerr, a former federal prosecutor and a Fourth Amendment expert, said he agreed with the court's ruling—to an extent. "Granted, I want there to be a circuit split to get the case up to the Supremes," he said. "That leaves me in an odd position: Although I think a judge should follow *Smith*, I also kinda want a lower court to not follow precedent in order to tee up the issue for the Supreme Court."

The Eleventh Circuit originally decided in June that a warrant was required because the public had a reasonable expectation of privacy in their public movements. "Thus, the exposure of the cell site location information can convert what would otherwise be a private event into a public one. When one's whereabouts are not public, then one may have a reasonable expectation of privacy in those whereabouts," the court ruled.

But what a difference a larger panel of judges makes when it comes to deciding the constitutionality of so-called § 2703(d) orders:

"The stored telephone records produced in this case, and in many other criminal cases, serve compelling governmental interests. Historical cell tower location records are routinely used to investigate the full gamut of state and federal crimes, including child abductions, bombings, kidnappings, murders, robberies, sex offenses, and terrorism-related offenses."

"Such evidence is particularly valuable during the early stages of an investigation, when the police lack probable cause and are confronted with multiple suspects. In such cases, § 2703(d) orders—like other forms of compulsory process not subject to the search warrant procedure—help to build probable cause against the guilty, deflect suspicion from the innocent, aid in the search for truth, and judiciously allocate scarce investigative resources."

For the two-judge dissent, Judge Beverly Martin wrote: "While I admire the majority's attempt to cabin its holding to the technology of five years ago, its assurances in this regard seem naïve in practice. As a result of today's decision, I have little doubt that all government requests for cell site location data will be approved, no matter how specific or invasive the technology."

The MetroPCS records at issue in the case were from August 1, 2010 to October 6, 2010. The defendant, Davis, made roughly 86 calls a day. The data included the telephone numbers of calls made by and to Davis' mobile phone; whether a call was outgoing or incoming; the date, time and duration of calls. The key dispute in this case concerned other data that was turned over. That included the number assigned to the cell tower that wirelessly connected the calls from and to Davis, and the sector number associated with the tower.

Davis' attorney, Nathan Freed Wessler of the American Civil Liberties Union, said that the "dissenting judges recognized outdated legal doctrines from the analog age should not be mechanically extended to undermine our privacy rights in the voluminous digital records that come with modern life." Reported in: arstechnica.com, May 5.

net neutrality

Washington, D.C.

In the months since the Federal Communications Commission voted to regulate the Internet like a public utility, opponents of the new rules have clamored to keep them from taking effect. On June 11, those opponents were disappointed as a federal judge denied their requests to stay the rules while litigation proceeds against them. The court did grant an expedited hearing of the case, meaning it could be argued as soon as the fall or early winter.

The decision, issued by the United States Court of Appeals for the District of Columbia Circuit, does not necessarily signal that the court will ultimately uphold the new, stricter rules, which reclassify high-speed Internet as a telecommunications service under Title II of the Communications Act and subject it to utility-style regulation.

"It's a very high hurdle to get a stay," said Roger Entner, an analyst at Recon Analytics in Boston. That one was not granted, he said, meant little. "You have to show there's irreparable harm, which means you can't undo the rules very easily. And that is very difficult to prove."

Still, the decision, while foreseen by some legal experts, was considered a win for proponents of the new regulations. "This is a huge victory for Internet consumers and innovators," said Tom Wheeler, chairman of the FCC. "Starting Friday, there will be a referee on the field to keep the Internet fast, fair and open."

Numerous parties have sued the FCC over the new rules since their publication in the *Federal Register* in April. Among them are trade groups—including the United States Telecom Association, the National Cable

and Telecommunications Association, the American Cable Association and the Wireless Internet Service Providers Association—and service providers like AT&T and CenturyLink.

Conspicuously absent from those that have filed suit is Verizon, which was alone in suing the FCC in 2010 over the agency's last version of similar but less restrictive rules. Verizon won that case, which prompted the FCC to shape its latest regulations.

"Verizon realized that they brought about a worse outcome for the industry by winning, and now they're kind of sitting quietly in the corner," Entner said.

Those who requested a stay had asked that only certain parts of the new rules not take effect, saying they supported the core principles of so-called net neutrality, which the rules seek to protect. Net neutrality refers to the concept of keeping the Internet open and democratic. To that end, the rules prohibit service providers from affecting consumers' access to particular kinds of content and delivering, for example, faster access to one website and slower access to a competitor.

"The parties that asked for the stay did something unusual," said J.G. Harrington, a telecommunications lawyer with Cooley in Washington. "They didn't ask for a stay of the basic network neutrality rules; they asked for a stay of the way the FCC used to get there."

In filing a request to stay the rules in May, Walter McCormick, president of the United States Telecom Association, said the group was "not seeking to stay the order's bright-line rules prohibiting blocking, throttling and paid prioritization," but was instead taking issue with "this ill-conceived order's reclassification of broadband service as a public utility service."

Some like McCormick have called such Title II regulation too burdensome and expressed worry that it gives the FCC too much broad authority that will stifle innovation and investment. (However, Charter Communications drew attention for telling the FCC that its commitment to investment was unaffected by the new rules.)

"Net neutrality is not that controversial anymore," Entner said. "It's Title II that this is all about."

McCormick said he was "disappointed" with the court's decision. But the court's agreement to accelerate the timetable of the case, he said, "shows the gravity of the issues at stake, and will facilitate a quicker path to determining the proper legal treatment for regulating broadband Internet access service."

Requests to keep the rules from taking effect on June 12 had also been filed with the FCC itself, but more as a procedural formality; parties seeking a stay are first expected to request one from the agency before appealing to the court. The FCC denied those requests, expressing confidence that the court would do the same.

At the same time that many had spoken up to ask that the rules be struck down, others had spoken up to defend them. "Granting a stay of the rules would cause real harm" to Internet users, said John Bergmayer, senior lawyer at Public Knowledge, a consumer advocacy group focused on Internet policy. "The 'harms' the carriers point to are largely imaginary, or nothing more than complaints about being prevented from doing things the rules are supposed to prevent them from doing."

In the next step of this legal battle, the numerous lawsuits are expected to be consolidated into one case. Harrington said a decision could come by early 2016. He added that the FCC and the courts were not the only path to challenging the rules. On June 10, the House Appropriations Committee introduced legislation that would prohibit the FCC from enforcing the rules until the litigation is resolved. "Congress," Harrington said, "is watching this decision very closely." Reported in: *New York Times*, June 11.

public records

Los Angeles, California

Two legal activist groups have lost their appeal in a public records lawsuit filed against the Los Angeles Police Department and the Los Angeles Sheriff's Department regarding license plate reader (LPR) data.

The Electronic Frontier Foundation (EFF) and the American Civil Liberties Union of Southern California (ACLU SoCal) had sued those law enforcement agencies to gain access to one week's worth of LPR data as a way to better understand this surveillance technology. After losing in Los Angeles Superior Court last August, the EFF and ACLU SoCal appealed; the court's decision was handed down May 6.

Both agencies, like many others nationwide, use these specialized cameras to scan cars and compare them at incredible speeds to a "hot list" of stolen or wanted vehicles. In some cases, that data is kept for weeks, months, or even years. Handing over such a large volume of records by a California law enforcement agency is not without precedent.

Earlier this year, Arstechnica obtained 4.6 million LPR records collected by the police in Oakland over four years and learned that just 0.16 percent of those reads were "hits." They discovered that such data is incredibly revelatory—they were even able to find the city block where a member of the city council lives, using nothing but the database, a related data visualization tool, and his license plate number.

The judge in the initial court ruling found that the law enforcement agencies could withhold LPR records—which include a plate number, date, time, and GPS location—through a particular exemption under the California Public Records Act that allows investigatory records to be kept private. The Court of Appeal of the State of California, Second Appellate District, Division Three, agreed:

"Contrary to Petitioners' premise, the plate scans performed by the ALPR system are precipitated by specific

criminal investigations—namely, the investigations that produced the "hot list" of license plate numbers associated with suspected crimes. As Real Parties' experts both testified, the ALPR system's principal purpose is to check license plates against the hot list to determine whether a vehicle is connected to a crime under investigation. In this way, the ALPR system replicates, albeit on a vastly larger scale, a type of investigation that officers routinely perform manually by visually reading a license plate and entering the plate number into a computer to determine whether a subject vehicle might be stolen or otherwise associated with a crime."

The judges also noted that the scope of the amount of data collected under the LPR system is "apart" from cases that had been addressed by other California courts, but they concluded that such a distinction was "irrelevant" to whether or not such records constituted an investigation.

"We are obviously disappointed with the ruling and believe it sets a very bad precedent for public access to law enforcement records," Jennifer Lynch, an attorney with the EFF, said. "Although more than 99 percent of the millions of ALPR records collected on drivers in Los Angeles every week are never linked to any criminal or vehicle investigation, the California Court of Appeal held LAPD and LA Sheriff's Department could withhold them as 'investigative records.'"

"But based on this interpretation of the California Public Records Act (PRA), other important information like body camera footage would also be exempt," Lynch said. "This means Californians would never be able to use the PRA to find out what information law enforcement agencies are collecting on us or even to get access to footage that could show how law enforcement officers are interacting with the public during protests like the ones that recently occurred in Baltimore. We are currently considering our options, including a petition to the California Supreme Court for review." Reported in: arstechnica.com, May 7.

Hamilton Township, New Jersey

Open records requests and lawsuits go hand-in-hand. Agencies obfuscate, stall, perform deliberately inadequate searches and fail to respond in a timely manner. These actions frequently result in lawsuits, which are almost always filed by the requester.

But that was not the case in Hamilton Township. In March, a private citizen named Harry Scheeler Jr. sent a request to the township for surveillance footage of the town-hall and police-department buildings, making the request under the state Open Public Records Act (OPRA) and the state common law right of access to public records. A few weeks later, instead of responding to the request, the township sued Scheeler and asked a local court for relief from any obligation to respond, then or in the future. The township also asked for attorney's fees.

This wasn't the first time this has happened, but it is incredibly rare and it almost always ends badly for the agency instigating the legal action. This case was no different, although it did manage to survive long enough for Scheeler to narrow his request in hopes of having the lawsuit dropped. The township was very persistent, but unfortunately for the township, the presiding judge recognized how wrong it would be to allow this suit to continue or otherwise encourage government agencies to sue open records requesters.

Judge Michael Winkelstein wrote: "Scheeler asserts that the Township has no authority to seek relief from the records request in court; that only the requestor has such a right. Consequently, before reaching the merits of the request, the threshold issue that the court addresses in this opinion is whether a government agency, such as the plaintiff, may file a lawsuit against a person requesting public records, or whether the right to institute a lawsuit determining the validity of the request belongs solely to the requestor. The court concludes that the right to bring the issue to court belongs exclusively to the requestor, not the government agency."

New Jersey's open records law—like those everywhere in the U.S.—provides for the filing of legal complaints against unresponsive government agencies. What the law doesn't provide for is the township's actions. In lieu of a response, it sought an injunction barring not only this request, but any future requests for similar information by Scheeler. As the court points out, this is about as far-removed from the intention of open records laws as anyone can get.

"To allow a government agency to file a lawsuit against someone who has submitted a request for government records would undoubtedly have a chilling effect on those who desire to submit such a request, undercutting the public policy previously described," the decision said. "A government agency's lawsuit against document requestors subjects them to involuntary litigation with all of its concomitant financial, temporal, and emotional trimmings. A public policy that gives a government agency the right to sue a person who asks for a government document is the antithesis of the policy underlying both OPRA and the common law to provide citizens with a means of access to public information to keep government activities open and hold the government accountable."

Now, not only has the temporary restraining order against Scheeler been lifted, but the township will be paying his legal fees as well. The court notes that not doing so would basically allow government agencies to trap citizens in "quixotic battles" against entities with "almost inexhaustible resources." Because Scheeler was "trapped" by a lawsuit he didn't initiate and one that pertained to the government's obligation to turn over requested documents, the presiding judge read the fee-shifting provision of the state's open records law as applicable to legal fees. To do otherwise, the court points out, would be reward

the township for violating open records laws. Reported in: techdirt.com, July 1.

Internet privacy

Alexandria, Virginia

The Virginia Supreme Court ruled April 16 that a judge did not have the authority to compel Yelp to reveal the identities of anonymous users who panned an Alexandria carpet-cleaning company in a case closely watched by free-speech advocates and businesses alike.

The decision sidestepped the thorny conflict at the heart of the case: Where do the First Amendment rights of Internet users to speak anonymously end and the rights of a company to defend its reputation begin?

Instead, the Virginia Supreme Court ruled that lower courts in the state did not have jurisdiction over Yelp because the company was located in California and the data that Hadeed Carpet Cleaning sought was stored in that state.

Paul Alan Levy, a Public Citizen lawyer representing Yelp, welcomed the ruling, saying Hadeed would have to pursue the reviewers' identities in California courts, which set a higher bar for revealing the identities of people making anonymous speech.

"If Hadeed turns to California courts to learn the identities of its critics, those courts will require it to show evidence to meet the well-accepted First Amendment test for identifying anonymous speakers," Levy wrote in a statement. "And so far, Hadeed has not come close to providing such evidence."

The case began in 2012 when Hadeed filed a defamation lawsuit against seven Yelp reviewers, claiming their reviews were probably false because no evidence could be found they were customers. Hadeed said the negative reviews had hurt its business.

Hadeed subpoenaed the reviewers' identities from Yelp, and an Alexandria Circuit Court judge ordered that the information be turned over. Yelp refused to comply with the ruling, saying it would appeal to protect its users' First Amendment right to speak anonymously.

Yelp and free-speech advocates said revealing the names of the reviewers would have a chilling effect on anonymous speech on the Web. Businesses say false reviews are hurting bottom lines as Yelp, Angie's List and other review sites become increasingly important in shaping customer's decisions about where to spend money.

Yelp argued in filings with the Virginia Court of Appeals that Hadeed needed to offer compelling evidence that the reviews were false before the courts could scuttle the reviewers' First Amendment right to speak anonymously—a standard followed in many states.

But the appellate court sided with Hadeed, saying the company had met the lower standards laid out in Virginia law. It ruled that free speech "must be balanced against Hadeed's right to protect its reputation."

Yelp then appealed to the Virginia Supreme Court.

Raighne C. Delaney, an attorney for Hadeed, said Hadeed had not decided whether to pursue the case in California but said he disagreed with the ruling and would like the General Assembly to make it easier to pursue cases involving out-of-state companies. "It's a real blow for the large number of businesses that have issues with Yelp," Delaney said. Reported in: *Washington* Post, April 16.

publishing

Cupertino, California

A federal appeals court on June 30 upheld a ruling that determined Apple to be the leader of an industry-wide conspiracy among book publishers to raise prices of digital books.

By a 2-to-1 vote, the United States Court of Appeals for the Second Circuit said it agreed with the conclusions of Judge Denise L. Cote of United States District Court in Manhattan, who rendered the decision in 2013.

"We conclude that the district court's decision that Apple orchestrated a horizontal conspiracy among the publisher defendants to raise e-book prices is amply supported and well reasoned, and that the agreement unreasonably restrained trade," the appeals court wrote in its decision.

In the case, brought in 2012, the Justice Department accused Apple and five book publishers of conspiring to raise e-book prices above Amazon's standard price of $9.99 for new e-book titles. The idea, the government said, was to allow publishers to set their own prices rather than letting retailers do so. The five book publishers settled the case before the trial.

When Apple entered the e-book market, it changed the way publishers sold books by introducing a model called agency pricing, in which the publisher—not the retailer—set the price, and Apple took a cut of each sale. The Justice Department argued that left Amazon.com, the other big e-books retailer, no choice other than to raise prices.

Apple fought the accusation in 2013 and lost after a month-long trial. The words of Steven P. Jobs, the company's co-founder, who died in 2011, proved damaging.

An email written by Jobs that referred to the agency model was frequently brought up at the trial. In the email, sent to Eddy Cue, Apple's senior vice president for Internet software and services, Jobs wrote of the contracts negotiated with publishers: "I can live with this, as long as they move Amazon to the agent model too for new releases for the first year. If they don't, I'm not sure we can be competitive."

In her ruling, Judge Cote said emails and spoken statements by Jobs made clear he knew that publishers were unhappy with Amazon's price of $9.99 for e-books and that Apple's entry would drive up prices across the industry.

"Apple has struggled mightily to reinterpret Jobs's statements in a way that will eliminate their bite," Judge Cote wrote. "Its efforts have proven fruitless."

The Justice Department said it was gratified by the court's decision. "The decision confirms that it is unlawful for a company to knowingly participate in a price-fixing conspiracy, whatever its specific role in the conspiracy or reason for joining it," William J. Baer, assistant attorney general of the Justice Department's Antitrust Division, said in a statement.

Timothy D. Cook, the company's current chief executive, called the e-book case "bizarre," and the company fought to overturn the judge's ruling. The company reiterated its disappointment in the decision in a statement.

"Apple did not conspire to fix e-book pricing and this ruling does nothing to change the facts," said Josh Rosenstock, an Apple spokesman. "We are disappointed the court does not recognize the innovation and choice the iBooks Store brought for consumers. While we want to put this behind us, the case is about principles and values. We know we did nothing wrong back in 2010 and are assessing next steps." Reported in: *New York Times*, June 30.

copyright

New York, New York

Music-streaming service Pandora won an important appeals court victory May 7 as the company defeated an attempt by songwriter group American Society of Composers Authors and Publishers (ASCAP) to increase the royalty rates the service must pay.

ASCAP has been tussling with Pandora for years, but the case reached a resolution last year when a New York federal judge ruled that Pandora should pay 1.85 percent of its revenue to the songwriters' group. That's pretty close to the rate that Pandora had argued for, which was 1.7 percent—the same rate paid by terrestrial radio stations. ASCAP lawyers sought a tiered rate that would have reached 3 percent by 2015.

"[I]t was not clearly erroneous for the district court to conclude, given the evidence before it, that a rate of 1.85% was reasonable for the years in question," wrote a panel of the U.S. Court of Appeals for the Second Circuit.

In addition to validating the lower court ruling, the appeals court also denied a request from Sony, EMI, and Universal to allow a "partial withdrawal" from ASCAP that would allow them to negotiate separate deals.

The victory was a needed, but small one for Pandora, which will continue to face long-term business concerns around copyright royalties. Financial statements show that Pandora pays about half of its revenue to copyright holders, the great majority of which goes to record companies. To license music copyrights, it's necessary to pay for both the copyright on the composition, often enforced by a group like ASCAP, and on the recording itself, which is usually owned by the record company. Reported in: arstechnica.com, May 7.

libel

Dallas, Texas

Do First Amendment protections—for instance, the various rules that protect libel defendants—apply to all speakers? Or are some of them limited to members of "the media," however that might be defined?

The great majority of precedents say that "the freedom of the press" extends to all who use mass communications, and that freedom of speech offers the same protection to speakers who use non-mass communications. The freedom of the press is the freedom for all who use the printing press and its technological descendants—not just a freedom for a specific industry or profession, such as the media or professional journalists.

This was the nearly unanimous view until about 1970; and even since then, it has been the view of the great majority of lower court precedents, and no Supreme Court precedent takes the contrary view. Indeed, the *Citizens United* decision expressly stresses that "We have consistently rejected the proposition that the institutional press has any constitutional privilege beyond that of other speakers."

As the U.S. Court of Appeals for the Ninth Circuit recently held in *Obsidian Finance Corp. v. Cox*, "The protections of the First Amendment do not turn on whether the defendant was a trained journalist, formally affiliated with traditional news entities, engaged in conflict-of-interest disclosure, went beyond just assembling others' writings, or tried to get both sides of a story. As the Supreme Court has accurately warned, a First Amendment distinction between the institutional press and other speakers is unworkable."

The Supreme Court did flag the question as unresolved in several libel cases from the late 1970s to 1990, and a few lower court precedents conclude that the Supreme Court's case law protecting libel defendants applies (in whole or in part) only to media defendants. A Texas Court of Appeals panel just joined this small minority, in the April 9 *Cummins v. Bat World Sanctuary* decision.

In Cummins, Mary Cummins harshly criticized Bat World Sanctuary (a sanctuary for bats, naturally) and its head, Amanda Lollar. Lollar and Bat World sued for, among other things, libel, and won $3 million in actual damages, plus $3 million in punitive damages.

Now one of the Supreme Court's First Amendment libel cases, *Philadelphia Newspapers v. Hepps* (1986), sets forth a narrow but important rule: In libel cases brought on matters of public concern (whether the cases are brought by public figures or private figures), the burden of proof of falsehood must be on the plaintiff. The traditional libel rule put the burden of proving truth on the defendant,

but the First Amendment, the Court held, forbade that in public-concern cases. This will matter in only a limited set of cases: cases where the evidence is at least roughly balanced. But in those cases, the Court held, the tie has to go to the speaker.

In the process, though, the Court noted that it need not "consider what standards would apply if the plaintiff sues a nonmedia defendant." And though lower courts have generally held that all the First Amendment libel rules do apply to "nonmedia" defendants, the *Cummins* court disagreed (without much analysis):

"As noted above, neither the United States Supreme Court nor the Supreme Court of Texas has required a private plaintiff to prove the falsity of defamatory statements in suits against nonmedia defendants, even when the statements are on matters of public concern. Lollar is not a public figure, and Cummins is not a media defendant, and therefore the defamatory statements are presumed false."

This unfortunate result requires Texas courts to now decide who counts as "media" for First Amendment purposes. Do book authors qualify? Filmmakers? Academics? Bloggers? (Does it matter whether they make money blogging? Whether they blog on a newspaper site, even if they are not newspaper employees?)

It seems unlikely, however, that either the Texas Supreme Court or the U.S. Supreme Court will agree to hear this case, partly because the Court of Appeals concluded that the bottom-line result would have been the same regardless of how the nonmedia rights issue was decided. Reported in: *Washington Post*, April 20.

"revictimization"

Philadelphia, Pennsylvania

On April 28, a federal judge in Pennsylvania struck down the state's "Revictimization Relief Act," agreeing with plaintiffs that it violated the First and Fifth Amendments of the US Constitution.

The law at issue was passed in October 2014, and permitted crime victims to sue convicted offenders to stop "conduct"—including speech—that cause "mental anguish" to the victims. The law was not limited to prisoners—even those completely out of the justice system could be subject to its restrictions. Much of the press surrounding the decision focused on controversial prisoner Mumia Abu Jamal, whose commencement address at Goddard College last year took place three days before the bill was introduced and was referenced by then-Governor Tom Corbett when he signed the bill into law.

The case is *Prison Legal News v. Kane* and covered another case as well, *Mumia Abu Jamal v. Kane*.

In his decision, U.S. District Court Chief Judge Christopher Conner wrote, "A past criminal offense does not extinguish the offender's constitutional right to free expression." Judge Conner dismissed the state's argument that the law was a mere regulation of conduct with an incidental impact on speech, and noted that even if that had been the case, the law would still be flawed:

"Assuming *arguendo* that the Act or its history revealed a principal intention to regulate behavior and only an incidental regulation of speech, the court's holding would remain unaltered. The Supreme Court has held that when a law "generally functions as a regulation of conduct" it is nonetheless subject to strict scrutiny when "as applied to plaintiffs[,] the conduct triggering coverage under the statute consists of communicating a message." *Holder v. Humanitarian Law Project* (2012).

The court held that the statute violated the First Amendment, for several related reasons:

1. The act deters the speech of convicted criminals and of people who might redistribute the speech, such as radio producers who produce programs that quote criminals, newspapers that publish interviews with criminals, and so on.

2. The Act restricts speech based on its supposedly offensive content: "Legislation restricting expression based on content is inherently suspect. As a consequence, such enactments demand the highest level of judicial scrutiny. . . . [And] the government may not proscribe speech based exclusively on its potential to offend. . . .

"The attorney general . . . denounces plaintiffs' characterization of the statute as a regulation of expression, describing it instead as a limitation of certain 'behavior.' The attorney general argues that the law's primary goal is to eliminate 'taunting' or 'harassing' behavior toward victims. She emphasizes the statute's use of the term "conduct" and dismisses any First Amendment infringement as "incidental" to this broader purpose. . . .

"The act contains no restrictive language supporting the construction urged by the attorney general. . . . Nor does the act's legislative history reinforce the attorney general's interpretation. No supporter spoke of an intent to prevent a convicted rapist from "crank calling" his victim, or a convicted kidnapper from standing outside of her victim's home for hours on end. Indeed, throughout its brief legislative gestation, the law was championed primarily as a device for suppressing offender speech."

3. The Act is unconstitutionally vague: "As a threshold matter, the statute does not define the term 'offender,' such that the public cannot know whose conduct it regulates. During a legislative judiciary committee meeting, committee counsel opined that the term permits a broad construction to include non-offender third parties who publish offender speech. The attorney general suggests that the term includes even persons who are accused but not yet convicted. It is thus unclear whether an offender includes the accused, the convicted, the exonerated, third parties, or all of the foregoing. As a result, many plaintiffs—prisoners and non-prisoners alike—instantly modified their conduct for fear of falling within the ambit of the act.

"The act's primary barometer of actionable expressive activity is equally vague. It refers only to 'conduct' that causes 'a temporary or permanent state of mental anguish,' but offers no guidance to state courts in determining whether a plaintiff is entitled to relief."

4. And, for similar reasons, the act is overbroad—it restricts a substantial amount of constitutionally protected speech: "Plaintiffs argue that the act is boundless in its potential applications, encompassing in its scope virtually any expressive activity by any person who has ever been convicted of a personal injury crime. The attorney general agrees that any conduct which elicits mental anguish in a victim might fall within the act's inestimable sweep so long as that victim can prove the fact of anguish in court. Hence, the act ostensibly affects protected—and critically important—speech, including: pardon applications, clemency petitions, and any testimony given in connection with those filings; public expressions of innocence, confessions, or apologies; legislative testimony in support of improved prison conditions and reformed juvenile justice systems; programs encouraging at-risk youth to avoid lives of crime; or any public speech or written work whatsoever, regardless of the speaker's intention or the work's relation to the offense. Absent well-defined parameters, the four corners of the act will quash important public dialogues, as long as a victim can demonstrate 'mental anguish.'"

The Freedom to Read Foundation filed an *amicus* brief in the case in February, arguing that allowing judges to issue injunctions in accordance with the law constitutes prior restraint "on a limitless range of speech, including matters of public interest, such as deterring crime, rehabilitation of prisoners, prison conditions, and fundamental issues of justice."

The bill's sponsor has indicated he will ask about an appeal and, if the Attorney General declines, will introduce new legislation. Reported in: ftrf.org, April 30; *Washington Post*, April 28. □

is it legal? . . . from page 116

denied by courts that found the language too vague, or the political setting too heated, to sway minds.

The attorney general is tasked with defending state laws that are challenged in court, though some in her shoes have broken away from such obligatory allegiances. Four years ago, for instance U.S. Attorney General Eric H. Holder Jr. announced the Obama administration had decided the federal Defense of Marriage Act was unconstitutional and would no longer enforce it.

Laurence H. Tribe, professor of constitutional law at Harvard, noted that while an attorney general may decline to defend a law, "in sufficiently extreme cases," or when directed by the president as Holder was, Tribe said "an independently elected state AG like AG Healey might be regarded as having less discretion to take such a stance." Reported in: *Boston Globe*, May 7. ☐

intellectual freedom bibliography

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