newsletter on intellectual freedom

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fifty shades of censorship?

It did not escape the notice of Tim Cole, collections manager for the Greensboro Public Library in North Carolina, that *Fifty Shades of Grey* was "of mixed literary merit," as he politely put it. He ordered 21 copies anyway.

His patrons had spoken, Cole said, and like other library officials across the country, he had gotten the message: Readers wanted the *Fifty Shades of Grey* trilogy. They have besieged libraries with requests for the books, signaling a new wave of popularity for these erotic novels, which became the best-selling titles in the nation this spring. In some cases demand has been so great that it has forced exasperated library officials to dust off their policies — if they have them — on erotica.

In April the trilogy, which includes the titles *Fifty Shades Darker* and *Fifty Shades Freed*, was issued in paperback by Vintage Books, part of the Knopf Doubleday Publishing Group, sending sales through the roof when the publisher printed and distributed the books widely for the first time.

That enthusiasm has carried over to libraries. At many, *Fifty Shades of Grey*, by the previously unknown British author E. L. James, is the most popular book in circulation, with more holds than anyone can remember on a single title, including 2,121 as of May 18 at the Hennepin County Public Library, which includes Minneapolis, up from 942 on April 9. At the Cuyahoga County Public Library in Ohio, a system that includes Cleveland, 454 holds were placed on the book in early April; by mid-May there were 1,399.

Robert J. Rua, an official with the Cuyahoga library, said they had bought 539 copies of the trilogy's first book. There is no section for erotic fiction in the library, he said, so Fifty Shades was placed among the other trade books for adults.

Despite misgivings about the subject matter — the books tell the tale of a dominant-submissive affair between a manipulative millionaire and a naïve younger woman — most library officials feel that they need to make it available.

"This is the *Lady Chatterley's Lover* of 2012," Cole said. "Demand is a big issue with us, because we want to be able to provide popular best-selling material to our patrons."

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

in this issue

targets of the censor

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But some libraries have been caught on the other side of the issue. The Brevard County Public Library in east central Florida pulled copies of the books from its shelves after library officials decided they were not appropriate for the public.

"We have criteria that we use, and in this case we view this as pornographic material," said Don Walker, a spokesman for the Brevard County government.

Vintage, which is part of Random House, said in a statement, "Random House fervently opposes literary censorship and supports the First Amendment rights of readers to make their own reading choices. We believe the Brevard County Public Library System is indulging in an act of censorship, and essentially is saying to library patrons: We will judge what you can read."

In May a group of organizations that included the National Coalition Against Censorship formally responded, sending a letter to the library board in Brevard County scolding it for refusing to stock the book alongside similarly erotic standards like Henry Miller's *Tropic of Cancer* or *Fear of Flying*, by Erica Jong.

"There is no rational basis to provide access to erotic novels like these, and at the same time exclude contemporary fiction with similar content," the letter said. "The very act of rejecting erotica as a category suitable for public libraries sends an unmistakable message of condemnation that is moralistic in tone, and totally inappropriate in a public institution dedicated to serving the needs and interests of all members of the community."

Joan Bertin, the executive director of the National Coalition Against Censorship, said in an interview that it was unusual for a library to remove a book from its section for adults.

"The vast majority of cases that we deal with have to do with removing books to keep kids from seeing them," she said. "That's what makes this so egregious. There are some possible arguments for trying to keep kids away from certain kinds of content, but in the case of adults, other than the restrictions on obscenity and child pornography, there's simply no excuse. This is really very much against the norms in the profession."

Apparently, on second thought, the Brevard Library agreed. On May 29, the library issued the following statement:

"The Brevard County Library System will return *Fifty Shades of Grey* to its library shelves.

"The decision is in response to public demand, but also comes after considerable review and consideration by the library system. In all, 19 books from the *Fifty Shades of Grey* trilogy that were previously available will once again be available through the library system," according to Library Services Director Cathy Schweinsberg.

"Earlier this month, a decision was made to pull *Fifty Shades of Grey* from our libraries as a result of published reviews and our own initial analysis of the book and its controversial content. Since then, we have begun a review of our selection criteria and that review continues even as the decision has been made to supply the book in response to requests by county residents."

"We have always stood against censorship," Schweinsberg said. "We have a long history of standing against censorship and that continues to be a priority for this library system."

But some other library systems maintained their refusal to carry the controversial titles.

The ten libraries in the Fort Bend County Library system, outside of Houston, declined to carry the books but allegedly not because of its eroticism. "The reviews weren't good. They said the book was very poorly written and we passed. We just decided that it was not a book that we needed," said librarian Joyce Kennerly. "The decision was based, again, on the professional media, that this simply was not a well-written book. It just wasn't something we felt we needed to add to our collection."

But patron demand was factored into the decision to carry it by the neighboring Harris County Public Library System, where the best seller has a long waiting list.

"Even if there were only negative reviews on this one, that's probably the case with a lot of popular fiction that we all have in our collection—it's not just his book. Sometimes, the public doesn't agree with the reviewers," librarian Linda Stevens said.

In Fond du Lac, Wisconsin, the library did not order any copies, saying the books did not meet the standards of the community. In Georgia the Gwinnett County Public Library, near Atlanta, declined to make the books available in its fifteen branches, saying that the trilogy's graphic writing violated its no-erotica policy. The Harford County Public Library in Maryland also declined to purchase the books, which they considered pornographic.

Mary Hastler, director of the Harford Library, read James' first two novels before determining that the series doesn't meet her library's selection criteria. She hasn't read the third novel.

"These books are a very different take on traditional romances," she said. "In my personal opinion, it's almost like a how-to manual in terms of describing bondage and submissive relationships. A lot of the reviews that came out very publicly and quickly identified these books as 'mommy porn.' Since our policy is that we don't buy porn, we made the decision not to purchase the series."

But other Maryland libraries have purchased *Fifty Shades of Grey*, yet it's unclear how accessible the book is given high demand. As of May 30, 241 people were on

the Enoch Pratt Free Library's waiting list for the print version of *Fifty Shades of Grey* and 1,828 readers were awaiting a digital copy. The Baltimore County Public Library System has a waiting list of 1,122 names, Anne Arundel County's library has 596 holds, the Carroll County Public Library has 363 waiting patrons, and the Howard County library has 968 active requests.

"Quite frankly, I think it would be hard to find an available copy in any library in the state of Maryland," said Concetta Pisano, head of materials selection for the Carroll County Public Library System.

Hastler's decision not to stock the series irked some library patrons, including retired schoolteacher Charlene Haupt. The 68-year-old Bel Air resident knows that she could easily obtain James' novels from a bookstore. But she said she objects on principle to "a public library funded by my tax dollars that doesn't want to purchase a book that's sexually oriented."

Marcee Challener, the manager of materials and circulation services for the Tampa-Hillsborough County Public Libraries, said that library officials there carefully considered the book before ordering it, but ultimately decided that it was no different from one of the paranormal romances featuring vampires that have been popular for years.

"There's sex and eroticism in many well-written literary novels," she said. "It's part of the human experience."

But Ken Hall, the library director in Fond du Lac, said he would rather spend precious library funds on books that had literary or artistic value. Since the library publicly announced that it would not stock the book, he has been hounded by insults, with some people calling him a useless bureaucrat. But he said he had also received numerous compliments from residents urging him not to back down.

"With this type of book, we will get somebody questioning our decision no matter what decision we make," Hall said. "We live in an age where people don't like to talk about gray areas. No pun intended." Reported in: *New York Times*, May 21; *Baltimore Sun*, May 30; baynews9.com, May 29; KTRK, May 24.

ALA statement on *Fifty Shades of Grey* controversy

The American Library Association's Office for Intellectual Freedom on May 10 issued the following statement:

The American Library Association supports libraries and librarians across the country, who face difficult decisions every day about how to allocate scarce resources in order to meet the wide-ranging information needs of their communities.

To guide decisions about what materials to select for a collection, libraries develop selection policies, which outline the principles and priorities they will follow in selecting items for the library. Libraries also strive to be responsive to the requests of community members in choosing materials. Selection is an inclusive process that seeks out those materials that will best satisfy the community's needs for information, entertainment, and enlightenment.

Recent controversy over the novel *Fifty Shades of Grey* has sparked discussion about the line between selection and censorship in libraries. Where selection decisions are guided by the professional ethics of librarianship – which emphasize inclusion, access, and neutrality – libraries choosing not to purchase materials that fall outside their defined collection policies and needs are not censors. Where partisan disapproval or doctrinal pressure guides libraries' decisions to select or remove materials, then censorship can result.

Materials like *Fifty Shades of Grey* challenge libraries' professional ideals of open, equitable, unbiased access to information. They raise important questions about how libraries can best include and reflect the diversity of ideas in our society – even those which some people find objectionable. In all circumstances, ALA encourages libraries making decisions about their collections to keep in mind their basic missions and the core values of intellectual freedom and providing access to information.

READ BANNED BOOKS

State of America's Libraries

ALA releases list of most frequently challenged books of 2011

Publishers limiting library e-book lending, budget cuts and book challenges are just a few *library trends* of the past year that are placing free access to information in jeopardy. These trends as well as others are detailed in the 2012 *State of America's Libraries Report* released April 9 by the American Library Association (ALA) in conjunction with National Library Week (April 8 – 14).

The rapid growth of e-books has stimulated increasing demand for them in libraries, but libraries only have limited access to e-books because of restrictions placed on their use by publishers. Macmillan Publishing, Simon and Schuster and Hachette Book Group refused to sell e-books to libraries. HarperCollins imposed an arbitrary 26 loans per e-book license, and Penguin refused to let libraries lend its new titles altogether.

When Random House raised e-book prices, the ALA urged it to reconsider. "In a time of extreme financial constraint, a major price increase effectively curtails access for many libraries, and especially our communities that are hardest hit economically," Molly Raphael, ALA president, said in a statement.

The single-minded drive to reduce budget deficits continued to take its toll on essential services at all levels of society in 2011, with teachers and librarians sometimes seen as easy targets for layoffs. Even the federal Institute of Museum and Library Services suffered budget cuts, and the Library of Congress lost nearly 10 percent of its workforce.

School librarians faced especially draconian budgetary challenges in 2011. Cuts began at the federal level in May 2011, when the Department of Education eliminated fiscal 2011 funding for the Improving Literacy Through School Libraries program, the only federal program solely for school libraries in the United States. The effects were soon felt at the state and local levels

Academic librarians and their colleagues in higher education in the United States also continued to navigate a "new normal," characterized by stagnating budgets, unsustainable costs, increased student enrollments and reduced staff.

Even during a period of budget battles, however, the library community, led by the ALA, stood firm against censorship. Internet-age versions of copyright and piracy issues shot to the forefront as 2011 turned into 2012, and the acronyms SOPA (the Stop Online Piracy Act) and PIPA (the PROTECT IP Act of 2011) became part of the vocabulary as the library and First Amendment communities took a strong stand against proponents of the legislation.

Book banning efforts were alive and well in 2011. The ALA Office for Intellectual Freedom (OIF) received 326 reports regarding attempts to remove or restrict materials from school curricula and library bookshelves. The Top Ten Most Frequently Challenged Books of 2011 include the following titles; each title is followed by the reasons given for challenging* the book:

1. *ttyl; ttfn; l8r, g8r* (series), by Lauren Myracle
   Offensive language; religious viewpoint; sexually explicit; unsuited to age group

2. *The Color of Earth* (series), by Kim Dong Hwa
   Nudity; sex education; sexually explicit; unsuited to age group

3. *The Hunger Games* trilogy, by Suzanne Collins
   Anti-ethnic; anti-family; insensitivity; offensive language; occult/satanic; violence

4. *My Mom's Having A Baby! A Kid's Month-by-Month Guide to Pregnancy*, by Dori Hillestad Butler
   Nudity; sex education; sexually explicit; unsuited to age group

5. *The Absolutely True Diary of a Part-Time Indian,* by Sherman Alexie
   Offensive language; racism; religious viewpoint; sexually explicit; unsuited to age group

6. *Alice* (series), by Phyllis Reynolds Naylor
   Nudity; offensive language; religious viewpoint

7. *Brave New World*, by Aldous Huxley
   Insensitivity; nudity; racism; religious viewpoint; sexually explicit

8. *What My Mother Doesn't Know*, by Sonya Sones
   Nudity; offensive language; sexually explicit

9. *Gossip Girl* (series), by Cecily Von Ziegesar
   Drugs; offensive language; sexually explicit

10. *To Kill a Mockingbird,* by Harper Lee
    Offensive language; racism

*A challenge is defined as a formal, written complaint filed with a library or school requesting that a book or other material be restricted or removed because of its content or appropriateness.

The State of America's Libraries Report documents trends in library usage and details the impact of library budget cuts, technology use and the various other challenges facing U.S. libraries. The full report is available at http://www.ala.org/news/mediapresscenter/americaslibraries/soal2012.

Occupy Wall Street librarians sue NYC over confiscated books

Occupy Wall Street filed a federal lawsuit May 24 against New York City, claiming authorities destroyed $47,000 worth of books, computers and other equipment confiscated from the protesters' encampment in lower Manhattan last fall.

Police conducted a surprise overnight raid at Zuccotti Park in November, clearing scores of protesters who had set up tents at the plaza near Wall Street and dealing a significant blow to the movement's potency.

As part of the sweep, Occupy claims, police officers seized approximately 3,600 books from the "People's Library" that had been donated to the movement. The protesters claim only 1,000 were returned, 200 of them in unusable condition. Among the books seized were classics by William Shakespeare and Fyodor Dostoevsky, as well as various autobiographies, including Mayor Michael Bloomberg's own, *Bloomberg on Bloomberg*, the suit said.

"To this day, OWS has not been told by the City of New York what happened to the missing books and the Library furnishings and equipment," according to the lawsuit, which was filed in U.S. District Court in Manhattan.

Norman Siegel, one of the lawyers representing Occupy, said other cities that conducted similar crackdowns went to court before seizing property, a step that New York chose to skip.

"This is an important and potentially historic lawsuit," Siegel said. "It not only addresses the seizure and destruction of the books, but it also seeks to show why, how, and who planned the raid on Zuccotti Park."

Siegel said information on the planning of the raid should come out in discovery, and added that the city should have been subject to a court hearing before seizing and destroying the thousands of books that made up the library. "Every other city did it before they raided encampments, but not here. The city violated the civil rights of the librarians. The Bloomberg administration had the power to do what they did, but not the right."

"This is a David vs. Goliath lawsuit," Siegel added. "We're confident that we will prevail. They thought they'd get away with it and now this lawsuit will hold them accountable. It's an important lawsuit because you don't destroy books."

Kate O'Brien Ahlers, a spokeswoman for the city's law department, said the city was waiting to be served with a copy of the lawsuit before commenting.

The lawsuit alleges several constitutional violations, including due process and unreasonable seizure claims. It names Bloomberg, police Commissioner Raymond Kelly, the city's sanitation chief and unnamed workers who may have destroyed the books.

Michele Hardesty, 34, an assistant professor on leave from Hampshire College in Massachusetts and one of the Occupy librarians, said the movement had carefully cataloged every book and could document each missing item.

William Scott, one of the People's Librarians who lived in Zuccotti Park and helped maintain the collection, said the police only gave one of his fellow librarians Stephen Boyer, 45 minutes to remove 3,600 books. "And police weren't even letting anyone in and out of the park at the time. So it was an impossible task."

Scott said that Sanitation workers were "poorly supervised in their task. At around 1:45 a.m. they began loading books into the sanitation trucks with crushing mechanisms, and continued to throw books and library structures in them until flatbed trucks showed up much later." The $1,000 in punitive damages demanded by the suit indicates that the librarians and the protesters believe that the city went beyond negligence, and had a callous disregard for their property, an assertion supported by the photos of destroyed property in the custody of the Sanitation Department.

Plaintiffs in the suit include Occupy Wall Street and five individual OWS librarians. The suit seeks a declaratory judgment that the City violated plaintiffs' rights under the First, Fourth and Fourteenth Amendments to the U.S. Constitution and Article I of the New York State Constitution. It also seeks compensatory damages of at least $47,000, punitive damages of at least $1,000 and legal costs. Reported in: *Reuters*, May 24; *Wall Street Journal*, May 24; *Gothamist*, May 24.

movement to protest Israel's policies triggers fights over U.S. scholars' speech

The movement to economically isolate Israel to protest its treatment of Palestinians has led to heavy trading in recriminations among American scholars and sparked debate over the limits of free speech and academic freedom.

Among recent developments, four public universities in California are resisting demands from a pro-Israel advocacy group, the Amcha Initiative, that they block academics from using publicly financed university resources to promote what is commonly known as the "Boycott, Divest, Sanction" (or BDS) movement to pressure Israel.

Meanwhile, more than 140 professors at American colleges have signed on to a letter to *The New York Times* formally objecting to the newspaper's publication of a conservative group's advertisement that attacked several scholars involved with the boycott movement. The ad, published on April 24, said the scholars "should be publicly shamed and condemned for the crimes their hatred incites."

The controversy over speech associated with the boycott movement comes at a time when the nation's Jewish organizations are themselves struggling to find a balance between embracing open debate over Israel and seeking to stifle criticism of that nation that they see as crossing the line into anti-Semitism.

The Jewish Council for Public Affairs, an umbrella

organization representing more than 130 local, regional, and national Jewish groups, has approved a resolution stating that federal complaints of anti-Semitic discrimination on campuses are a valuable tool but could trigger a backlash if filed too hastily with the Education Department's Office for Civil Rights. Jewish activists who have formally accused colleges of violating federal law by tolerating anti-Semitism argue that such complaints are justified. The incidents the complaints cite, the activists say, reflect just a portion of the anti-Semitism they associate with critics of Israel on college campuses.

The Amcha Initiative has accused professors at both California State University at Northridge and the University of California at Los Angeles of promoting the boycott-Israel movement on Web sites hosted by the universities. The group has asked both of those institutions to take steps to keep university resources from being used in such a manner. The group also recently sought, without success, to persuade the presidents of three Cal State institutions—the campuses at Fresno and Northridge, and California Polytechnic State University at San Luis Obispo—to revoke their universities' sponsorship of talks by Ilan Pappé, a historian who is director of the European Centre for Palestine Studies at the University of Exeter. Pappé is a harsh critic of Israel who has been accused of anti-Semitism, despite being Jewish.

Charles B. Reed, chancellor of the Cal State system, has backed the campus presidents in their decisions to defend their institutions' sponsorship of Pappé's talks on free-speech grounds. He has also stood behind the decision by Harold Hellenbrand, interim president of the Northridge campus, to let David Klein, a professor of mathematics, continue to post a link on his university Web site to a separate site with resources for people involved in the movement to boycott Israel.

In April, Hellenbrand, who is also the campus's provost and vice president for academic affairs, sent faculty members and administrators a letter accusing the Amcha Initiative of attempting to squelch criticism of Israel. His letter said the group's characterization of Klein's Web page as anti-Semitic "reflects a partisan and sectarian view." Giving in to the group's demands, he said, would threaten not only the First Amendment's guarantee of free speech but also its guarantee of separation of church and state, by letting a sectarian group determine what speech is acceptable.

"To enforce this view on political academic speech is to truncate the only enduring corrective to error and abuse, discourse itself," Hellenbrand's letter said. "It is to suborn speech and thought to the very thing George Washington warned against, entangling alliance with a foreign power."

Tammi Rossman-Benjamin, a lecturer in Hebrew and Jewish studies at the University of California at Santa Cruz who is a co-founder of the Amcha Initiative, called Hellenbrand's letter inappropriate, insensitive, and defamatory, arguing this week that "he goes to great lengths to delegitimize us in ways that effectively demonize us." The Global Frontier Justice Center, an advocacy group based in Brooklyn, N.Y., has asked California's attorney general, Kamala D. Harris, to step in and stop Klein from posting any links to the boycott movement on his Web site. Harris has not responded.

It is unclear where UCLA stands in regard to the Amcha Initiative's complaint about David Delgado Shorter, an associate professor of world arts and cultures. Shorter posted a link to a boycott-Israel petition, which he had signed, on a Web site for students in a course on "Tribal Worldviews," which he taught last winter.

In April, Andrew F. Leuchter, chairman of the university's Academic Senate, sent Rossman-Benjamin an e-mail in which he said the head of Shorter's department, Angelia Leung, had told Shorter that posting such materials was inappropriate. "Professor Shorter's chair assures me that he understands his serious error in judgment and has said that he will not make this mistake again," said the e-mail from Dr. Leuchter, a professor of psychiatry and behavior sciences.

Shorter, however, has denied saying he made a mistake and agreeing not to post such links. At his request, the UCLA Academic Senate's committee on academic freedom has stepped in to investigate how administrators there have handled his case. Leuchter said that he considers the matter closed. "This matter was resolved informally, but effectively and appropriately, with Professor Shorter's department chair simply speaking to him about it," he wrote.

The New York Times advertisement that stirred controversy was purchased by the David Horowitz Freedom Center, an organization founded by the conservative writer for which it is named. The ad cited the recent murder of a rabbi and three Jewish children in Toulouse, France, and said it may have been inspired by an "atmosphere of hate" fueled by the boycott-Israel movement. Specifically naming 14 American college professors who have been supportive of the boycott-Israel movement, the ad says, "If BDS activists refuse to moderate their rhetoric and end their scapegoating of Jewish businesses, they should be held accountable for the consequences of their hate."

In their letter to the newspaper, sent last month, the more than 140 professors protesting the advertisement said the ad "grossly distorts the statements" made by the professors and represents an attempt by the Horowitz center "to shut down informed debate."

"Even those of us who do not support BDS are alarmed at your carrying an advertisement that misinforms and names individuals who do not have the money that Horowitz has to defend themselves through this chosen medium," the letter said.

The newspaper has responded to the letter, which it did not publish, by saying it does not base its decisions on whether to publish advertisements on the opinions they express. Reported in: *Chronicle of Higher Education* online, May 4.

state climatologists face free speech challenges

It's tricky being a state climatologist these days, says David Stooksbury, who was Georgia's until last year. People in the job—which focuses on local forecasts, not global change—seem to run afoul of governors, both liberal and conservative, and find themselves abruptly booted out of office.

"The state never even contacted me," said Stooksbury, who is an associate professor of atmospheric science in the University of Georgia's new College of Engineering, a job he held concurrent with his state responsibilities. "I got an e-mail from a friend last September saying he'd heard I was being let go. And I still really don't know why." In a politically conservative state, he suspects, he may have pushed too hard for water conservation and alternative energy.

George Taylor is much clearer on why he lost his job. His title at Oregon State University was state climatologist in 2007 when, he recalls, "the governor said, in essence, 'He's not my state climatologist' and told the university to stop me from using that title, which I did."

The reason for the move was no secret: Taylor doesn't believe people are making the planet warmer and repeatedly said so while the Democratic governor was trying to reduce fossil-fuel use in the state. "Academic freedom being what it is, it wasn't possible for him to fire me," Taylor said. Nonetheless, he retired the following year, fed up with the situation.

The two researchers' positions on climate change couldn't be more different. "I think we are on firm ground saying we will have warming globally," says Stooksbury. "Sure, there are uncertainties, but are you willing to bet the future on them?" In his state work, however, he emphasized, he confined his statements to topics like droughts and the need to watch water consumption.

Taylor, in contrast, sees natural cycles of warming and cooling. He thinks that the effects of carbon dioxide "are overstated by a lot of people. The first time I said this, in a talk at OSU in 1996, I was greeted by a great deal of anger. That day I became a pariah." But he hasn't changed his mind.

He now runs a consulting firm, Applied Climate Services, that does flood assessments for local water districts. There is a new, state-supported climate-research institute service at Oregon State headed by Philip W. Mote, a snow expert who worked on a 2007 report by the U.N.'s Intergovernmental Panel on Climate Change that said human activity was the likely cause of global warming. He does not have the official title of state climatologist.

In Georgia, the state climatologist is now an employee of the state's Environmental Protection Division. "That's the saddest part," said Stooksbury, who continues to study climate. "The position had been in the university to keep it out of politics. Now it is a political appointment." Reported in: *Chronicle of Higher Education online, May 6.*

Ray Bradbury, author of *Fahrenheit 451*

Ray Bradbury, a master of science fiction whose imaginative and lyrical evocations of the future reflected both the optimism and the anxieties of his own postwar America, died June 5 in Los Angeles. He was 91.

Bradbury was the author of numerous novels and stories, but perhaps his most enduring has been the dystopian novel *Fahrenheit 451*. An indictment of authoritarianism, it portrays a book-burning America of the near future, its central character a so-called fireman, whose job is to light the bonfires. (The title refers to the temperature at which paper ignites.) Some critics compared it favorably to George Orwell's *1984*. François Truffaut adapted the book for a well-received movie in 1966 starring Oskar Werner and Julie Christie. The book has been a popular assignment in high schools and colleges since its 1953 publication.

In 1954, the National Institute of Arts and Letters honored Bradbury for "his contributions to American literature," in particular *Fahrenheit 451*.

Bradbury stoutly denied that *Fahrenheit 451* was about government censorship. Nor was it a response to Senator Joseph McCarthy, whose investigations had already instilled fear and stifled the creativity of thousands. It was, among other things, about people's television-induced loss of interest in reading, in anything that could not be taken in at a glance. Unlike Orwell's *1984*, in which the government uses television screens to indoctrinate citizens, Bradbury envisioned television as an opiate.

Most Americans did not have televisions when Bradbury wrote *Fahrenheit 451*, and those who did watched 7-inch screens in black and white. Interestingly, his book imagined a future of giant color sets — flat panels that hung on walls like moving paintings. And television was used to broadcast meaningless drivel to divert attention, and thought, away from an impending war.

In *Fahrenheit 451*, the degradation of books is caused by a society grown so diverse with grievances that offensive material is stripped out of books. Eventually all books become so bland that no one reads them. That's when the government brings in the firemen.

"It was a book based on real facts and also on my hatred for people who burn books," Bradbury told the Associated Press in 2002.

Though his books became a staple of high school and college English courses, Bradbury disdained formal education. He went so far as to attribute his success as a writer to his never having gone to college. Instead, he read everything he could get his hands on: Edgar Allan Poe, Jules Verne, H. G. Wells, Edgar Rice Burroughs, Thomas Wolfe, Ernest Hemingway. He paid homage to them in 1971 in the essay "How Instead of Being Educated in College, I Was Graduated From Libraries." Late in life he took an active role in fund-raising efforts for public libraries in Southern California. Reported in: *New York Times*, June 6; firstamendmentcenter.org, June 7; LA Weekly, May 30, 2007.

censorship dateline

libraries

Tampa, Florida

Kelly and Mike Neill say they were shocked when their 7-year-old son came home from school, rattling off graphic details about a murder. They grew angry when they learned that those details came from a story he read from myOn, a new virtual library offered by Hillsborough County schools.

The Neills used their son's identification number to log on and, with a few clicks, they were staring at photos of murder scenes and autopsies. There were stories about urban legends and witchcraft—all available to their first-grader.

"There was a dead body with a toe tag, right there on the cover," Kelly Neill said. "I thought, 'Are you kidding me? Somebody has messed up big time.'"

This was the Neills' first encounter with myOn, but soon every child in Hillsborough County will have access to it. Neighboring Pinellas County is currently reviewing the online library system. The program is designed to provide access to more books and encourage reading among impoverished youth.

Now, concerns raised by the Neills and a handful of other parents have the district and Capstone Digital, creator of the library, re-evaluating some of myOn's features. This isn't exactly the kind of local introduction the company hoped for, said Todd Brekhus, president of Capstone Digital.

"I don't want this to outweigh the positive information here," Brekhus said. "And that's that 2,200 titles are in the homes of Hillsborough County school kids. These include houses that don't have many books now."

A myOn pilot program has been available in some schools for about two years, and this version was introduced to elementary schools in summer school last year, said Linda Cobbe, spokeswoman for the Hillsborough County School District.

The full version is rolling out to schools now. Letters are being sent home with students informing them of myOn. And because it's an online library, they can access it at home, as well as at school.

MyOn, Cobbe said, is a partnership between the district and groups like the nonprofit, taxpayer supported Children's Board of Hillsborough County. The goal is to entice kids to read, and if forensics is what interests some, those stories will be there. Reported in: eschool news, April 18.

Annville, Pennsylvania

More than 180 people have signed an online petition that seeks to have the award-winning children's book *The Dirty Cowboy* returned to the shelves of the Annville-Cleona School District. "I think the school board misjudged the sentiment of the community," said Annville resident Michelle Carey, who started the petition. "I think the community as a whole will find it age-appropriate. If a small minority think it's inappropriate, then they should supervise their children and make it their own issue," she said.

The Annville-Cleona School District board voted April 19 to remove *The Dirty Cowboy* from elementary-school library shelves because of its illustrative content, involving a cartoon cowboy taking his annual bath. The book was written by Amy Timberlake and illustrated by Adam Rex.

The book is the story of a young cowboy who needs his annual bath and instructs his dog to watch his clothes while he bathes. When the cowboy emerges from his bath in the river, the dog does not recognize his familiar smell and refuses to give back his clothes.

In his illustrations, Rex uses various items, such as birds, a boot and a cloud of dust, to cover the cowboy's private parts while he is bathing and then while he is attempting to get his clothes back.

The book has received numerous awards, including the International Reading Association award in 2004, the Parents Choice Gold Medal, and the Bulletin Blue Ribbon from the Bulletin for the Center for Children's Books.

The story is supposedly true and was once reported by Timberlake's great-grandfather, a newspaper reporter and editor in New Mexico, she said.

A complaint was brought about the content of the book. The school followed its procedures, and the school board voted unanimously, with one absence, to pull the book. Before the school board's vote, an evaluation committee consisting of teachers, administrators and board members met to review the book and recommended its removal.

"I was sort of surprised by the extent of the illustrations," said school board president Tom Tshudy.

Ironically, it was the content of the illustrations—along with the story content—that helped make the book an award-winner, and it's one of the things noted in various reviews. The book contains no shocking depictions of parts

of the dirty cowboy that wouldn't routinely see the light of day.

"I just think it's ridiculous," author Timberlake said of the ban. "It's sad that now if a child wants to check that book out, they're going to have to go ask their parents for their permission, which is going to involve the parents explaining why they have to get permission to read a story about a bath.

"They all take baths," she added. "They all remove their clothes to take baths. They're making a situation out of something that isn't really a situation."

Timberlake also spoke to the larger issue of libraries and librarians in a blog post regarding A-C's position. "This fight is about libraries providing access to all sorts of books (the ones we like and the ones we don't), for all sorts of people. None of us want a vehement few choosing the books we get to read."

The National Coalition Against Censorship (NCAC) entered the fray surrounding *The Dirty Cowboy* on the eve of a board meeting at which parents were set to object to the ban. NCAC sent a letter May 16 to the members of the board, expressing the coalition's concern over the decision to remove the book and urging the board to return the book to the district's libraries.

However, when ten Annville residents addressed the board to request a reconsideration of the decision the board stood firm. Board President Tom Tshudy noted that children are required to attend public schools, and their parents can't control everything they see or do in school.

"There is a difference in a public-school library where kids are required to go, where parents aren't allowed to come with them," he said.

At one point, while an audience member was talking about not being able to shelter kids from everything he finds objectionable, Tshudy suggested putting Hustler magazine in the elementary school libraries. His comment was met with jeers.

Tshudy said there was a process that was followed before removing the book. "Reasonable minds can differ," he said. "We all have different life experiences, different views on things.

Board member Mark Frattarole said he heard from a lot of people who don't want the book returned to the shelf. Frattarole said he bought a copy of the book and showed it to 14 people, and half of them did not want the book returned to the shelf. Three of them said the book should be put back on the shelf, and four said the book was questionable, he said.

"I wanted to go back and do a gut check to see what other people are saying," he explained.

But Lebanon Valley College English and journalism professor Mary Pettice, an Annville resident, said she had many concerns about the board's removal of the book. In particular, she said, she was concerned with the fact the decision was based on the complaints of one student's parents.

"I will suggest that the board did not fully consider the ramifications of its action and failed to investigate alternatives to banning the book," Pettice said. A careful reading of the district policy concerning removal of materials will reveal that "the board failed to review the book objectively and was especially errant in making its decision without considering the entire context of the book," she added.

Annville resident Tim White said he supports the rights of the parents who complained about the book and supported them for expressing their concerns.

"However, we do not support the right of one citizen, parent or group to impose a well-intended but subjective judgment of what constitutes moral integrity and moral decency upon the district without a thorough, objective, professional evaluation of the complaint using accepted educational guidelines," he said.

The only audience members speaking in favor of removing the book were Lebanon residents Carl and Abigail Jarboe. Both said the book has no redeeming social value and praised the board for removing it.

"There is no reason whatsoever why that should be on the shelves of the library no matter how well accepted it is by the world who have rejected God, who have rejected the standards of the Bible," Abigail Jarboe said. "This book has nothing good to offer about it!"

"It has 16 pages containing almost naked pictures of this cowboy," Carl Jarboe said. "This is right on the edge of what our law in Pennsylvania considers obscenity, absolute obscenity."

Carey, who started the online petition to have the book returned to the district's libraries, said she started the petition because she felt the board focused on one complaint rather than the feelings of the community as a whole.

"I'm not an expert in censorship," she said. "I'm not an expert in children's literature or the law. What I am is a concerned parent that feels that the action of the Annville-Cleona School District last month can only open the door for more problems with censorship within our school district."

Carey noted that she read the book to her kids, and they did not even mention the cowboy being naked.

"I'm going to guess that's because they already know that every single one of us get naked to take a bath," she said. "To them it was a non-issue, and to me it's a non-issue as well." Reported in: *Lebanon Daily News*, April 20, May 8, 16, 18.

Humble, Texas

Fireworks erupted at the May Humble Independent School Board meeting regarding the selection of books in Humble school classes and libraries.

The controversy began in April when Ron Abbott, the parent of a seventh-grade student at Creekwood Middle School, addressed the board regarding the book *Stuck in*

Neutral, by Terry Trueman. The fictional book is told in the first person by a teen with cerebral palsy and deals with such subjects as disabilities, quality of life and euthanasia. Abbott believed the book was an inappropriate reading assignment for a child his son's age. Abbott also raised concerns regarding a speaking appearance by Trueman at Creekwood Middle School (CMS).

Abbott once again addressed the board at the May meeting, along with several other parents upset with the selection process.

"The question boils down to age appropriateness," said Abbott. "Is a seventh-grader capable of reading a book like this and not being disturbed? Furthermore, if you assign a book like this, the next question is should there be a classroom discussion? And what concerned me the most is that the book was given to the students; the students read the book; upon finishing the book there was a content test and that was it. No discussion, no debate over euthanasia."

Other parents also came forward to talk about the controversial book and others in school libraries.

"As parents, we want our kids to be reading good materials of good quality," said parent Dottie O'Farrell. "That's what concerns us the most. For all of us, when it comes to our children, nothing else matters."

O'Farrell mentioned concerns regarding the way parents can challenge books they find inappropriate. This challenge includes a review committee, but O'Farrell said in her case, the committee consisted of the librarian and the teacher that assigned the book Scary Stories to her fourth-grader. She felt the process was not fair and equitable.

"My goal originally was to get this book out of the library," O'Farell said. "But I changed my goal because I felt parents didn't really get a say-so in what our children read."

While many of the speakers at the meeting were in support of change, others came to the defense of both Trueman's book and the selection process. One of those was the grandmother of a boy with cerebral palsy.

"The book *Stuck in Neutral* has somehow offended some of the parents of children assigned to read it," said Stacy Williams. "This book was educational and courageous. The newspaper article I read said the book was inappropriate for the age group. Is Harry Potter appropriate for seventh-grade students whose mind is so influential? We also sign permission slips to have our children educated about sex, childbirth and diseases because those are facts of life. Cerebral palsy is also a fact of life."

Atascocita Middle School (AMS) librarian Rita Kneisley also defended of the current system and her fellow librarians.

"All librarians in the district have masters degrees in library science and have taken several classes about materials selection and we do so with credibility," said Kneisley. "This book is a work of fiction. If you watch the news lately, there is much more to be concerned about."

Another controversy involving Trueman's appearance at CMS is that Abbott and others complained Trueman used inappropriate language with students. That drew the ire of board member David Martin.

"If that happened there should be some accountability because we would hold our kids accountable if they did that," Martin said. "There is no way on God's green Earth that the phrase 'F-off' was meant to be interpreted 'go fart off.' You don't have an adult tell a 12-year old kid that, and I will be darned if they will do that while I am sitting on this board. Totally, totally inappropriate."

Board President Dr. Bonnie Longnion recognized the sensitivity of the emotional issue.

"I do think there is merit in appropriate books at an appropriate level and language to discuss tolerance, acceptance and values for people that are different," she said. "I think sometimes if a book is controversial because of its language, that should be the parents' only option to opt out. I think there may be other books possibly that address the same kind of issue."

Humble Superintendent Dr. Guy Sconzo promised the board that he would bring forward a new policy that the board will be able to consider at its June meeting.

"In my opinion, we have not been as overt as we could have been or should have been in terms of enforcing what is a part of our policies and procedures and that is the parent opt-out provision," Sconzo said. "That is an area that we have to be much more, and our expectations have to be more, proactive about."

He said the changes to be considered would be in three areas: refining the review committee, opt-out procedures for parents, and the external speaker review process.

After the meeting Kneisley gave a statement defending her views and the current process. "All parent requests are honored at AMS and other schools. If parents don't want children reading something, I don't allow them to check it out," she said. "Terry Trueman visited AMS, CMS and three other schools and the only complaints were here from parents at CMS. There were no other complaints anywhere else." Reported in: *Humble Tribune*, May 14.

Davis County, Utah

A picture book about a lesbian couple raising a child was removed from the shelves of elementary school libraries in Davis County after a group of parents raised objections about the suitability of the story.

In Our Mothers' House, by Patricia Polacco, remains accessible at schools in the Davis School District, but only if a student presents a permission slip from a parent to check out the book, said district spokesman Chris Williams.

The decision to keep the book "behind the counter" in libraries followed an April 30 meeting during which a seven-member committee determined the book didn't align with district curriculum standards. The committee,

composed of teachers, administrators and parents, voted 6-1 to keep the book off shelves, with a high school librarian casting the dissenting vote.

"State law says schools can't have anything in the curriculum that advocates homosexuality," Williams said. "That is why it is now behind the counter."

Concerns about the book bubbled up in January, when the mother of a kindergarten student at Windridge Elementary in Kaysville became upset when her child checked out the book and brought it home. The mother and her husband brought their concerns to elementary school officials, according to Williams.

A committee at the school level decided to move the title to a section of the library for grades 3 to 6, after determining the book — recommended for students in kindergarten through second grade — was better suited for older readers, Williams said. That didn't appease the parents of the kindergarten student, who gathered 25 signatures on a petition to move the discussion to the district level.

The district committee voted in April to place the book behind the counter.

Williams said the book was purchased in part because a student who attended Windridge Elementary has two mothers and librarians wanted to foster inclusion. "While we've restricted the book, this book is still available," Williams said.

The district's decision indicates there is more work to be done in Utah to promote understanding of the state's increasingly diverse communities, said Brandie Balken, executive director of Equality Utah.

"My first take is this: Parents have and should take seriously the importance of speaking to their children about their families, their history and their deeply held personal values. But as a community, we have a responsibility to hold open a space for children to accurately understand families, history and personal values as they actually exist in our diverse community," Balken said of the district's decision to limit access to the book.

"I think at its core, it's important for us as a community to be committed to all children feeling like their families are valuable. And that they are safe in being their full selves at school," she said.

Polacco offers a description of the book, published in 2009, on her website, www.patriciapolacco.com. The book has been banned in other U.S. schools, including in several Texas districts.

"Marmee, Meema, and the kids are just like any other family on the block. In their beautiful house, they cook dinner together, they laugh together, and they dance together. But some of the other families don't accept them. They say they are different. How can a family have two moms and no dad?," the description states. "But Marmee and Meema's house is full of love. And they teach their children that different doesn't mean wrong. And no matter how many moms or dads they have, they are everything a family is meant to be."

Controversy over the Polacco book prompted the Davis School District to ask school librarians to name other titles that parents might find objectionable, according to one district librarian. DaNae Leu, a media specialist at Snow Horse Elementary School in Kaysville, said the district is taking a proactive stance on pulling other books in the wake of the controversy. Also marked for removal is *And Tango Makes Three*, the story of a pair of male penguins who sit on an egg at a zoo until it hatches; and *Totally Joe*, a book for ages 10 and up about a teenager who is gay.

Leu called *Totally Joe* one of the best books written on bullying. She said teen suicide is a concern in Utah and it's important to provide material in schools to which all students can relate.

"There is a high incidence among teens who commit suicide who are gay," Leu said. "Having some understanding, having some empathy is not a bad thing. None of these books are going to turn anybody gay."

She said librarians are being asked to supply names of books that contain gay and lesbian characters. Many librarians are frustrated about the situation, she said, but are nervous about speaking out because they fear reprisals.

"I've never seen this happen. It's almost like they want to preemptively pull books that might disturb somebody," she said. "I feel like Joe McCarthy is asking me to name names," she said of discussions in which administrators have asked for book names.

Leu said some librarians believe the decision to remove *In Our Mothers' House* set a precedent of letting parents call the shots on what material should be allowed in school libraries.

"I don't want to disparage my district. I think they were trying to protect themselves against state law," said Leu. "Ethically, I don't feel right about it. I feel like the book is age-appropriate. I know it's available upon asking, but it's also available under a stigma."

"I feel that history is not going to look favorably on this. In 20 years, we're going to look and think 'How could we ever have thought that?'" she said of limiting access to the book.

Leu said she would like clarity from lawmakers on why school library books fall under the umbrella of curriculum, when it's equally important to provide books for recreational reading.

"I would like the state law to specifically state that library books are not exclusively curriculum," she said. "To me, it makes sense that libraries should have some autonomy on collecting books that meet the needs of the students."

Leu provided a letter expressing her objections to the removal of *In Our Mothers' House* to committee members who decided to remove the book. The library "should not be a place where every book will appeal to every patron," she wrote. "It is not a place where only a narrow view of the world is to be found. Parents should be actively interested and involved in the books their children read. Parents have every right to request that their children avoid or actively

seek out individual titles. Parents shouldn't expect to make that choice for other people's children."

Other books have been contested in Davis County schools in the past. More than a decade ago, some parents were troubled about violence in a 1971 book titled *Grendel* by John Gardner. John Steinbeck's *Of Mice and Men*, along with J. K. Rowling's "Harry Potter" series and Stephanie Meyer's "Twilight" series, have also sparked parental concerns over the years, Williams said. Those books were never removed from shelves, however.

Williams said district librarians look at several factors when choosing books, including state curriculum recommendations, suggestions from colleagues, student recommendations and lists from the American Library Association. He said school librarians have "a lot of autonomy" in the books they choose.

He said the district hasn't received any complaints from parents about Polacco's book being placed behind the counter. Reported in: *Salt Lake Tribune*, May 31, June 1.

schools

Erie, Illinois

An Illinois school district has reportedly banned the otherwise-well-received *The Family Book* because of a reference to same-sex parents. Todd Parr's children's book has been yanked from an Erie elementary school's shelves because of a line which notes that "some families have two moms or two dads."

Erie School District 1 Superintendent Bradley Cox said that several parents argued that the book "discussed different types of family structures" and "those are issues that shouldn't be taught at the elementary school level."

The district has been using the book as part of its Tolerance, Diversity and Anti-Bullying Curriculum at the elementary level.

"The parents' concerns that were voiced were the source of the material. It was from GLSEN (Gay, Lesbian and Straight Education Network). And also the book that won't be used moving forward was a family book and in that book it discussed different types of family structures," said Cox.

And now the district is banning everything furnished by GLSEN including learning materials and various programs aimed at preventing bullying.

One parent said she can't believe this is even an issue this day in age. Lindsay Brookhart has three kids in the Erie Community School District and she's not alone when she said, "Give me a break! Is this seriously an issue in our town?"

More than a hundred Erie residents have signed a petition outraged over the recent ban at the elementary level. "I think everyone needs to take a step back, research the materials themselves and they'll see that it's not anything that is age inappropriate. It's things that our children see every day, teaching them to deal with life they already see," said Brookhart.

She said censoring materials that have already been proven to be effective in schools nationwide will hurt the progress of her small town. "The material was co–written by the national association of elementary school principals. It's been shown in schools across our country to be effective and I've seen it in my own household," said Brookhart.

Lindsay's daughter, Kyiah, is headed to the third grade and took away a lot from the school's anti–bullying programs sponsored by GLSEN. Her favorite she said is "No Name Calling Week," now banned.

Cox stressed that the curriculum will not be changed, only the materials used to teach the students will be different. "We're still going to teach tolerance, we're still going to teach diversity," said Cox.

"I think that we need to acknowledge the diversity of our school. I think all people; all children need to feel accepted in our community. If you don't have that platform to stand on then you're not going to teach your children to be compassionate and caring towards others," said Brookhart.

Cox said from here on out, under no circumstances will topics involving alternative lifestyles be discussed at the elementary level. "I think it's probably a bit of a misrepresentation to say that its just a few parents who have a concern when in fact at the end of the day it was a school board representing that views, values and philosophies of a community that really made the decision… I think our community has very clearly said if those topics come up with 6 year old or 7 year olds that they would rather have those topics discussed at home," said Cox. Reported in: huffingtonpost.com, June 1; cbs4qc.com, June 1.

Topeka, Kansas

Harrison Baker understands the need for Internet content filters at Topeka Unified School District 501. But he questions the need for one that keeps high school students from conducting research on certain topics for school and prevents teachers from searching some websites.

Students and staff members really began to feel the effect of the filter when the district had to curtail audio and video streaming websites earlier this year because of bandwidth restrictions during Kansas assessment testing.

"We enhanced filtering so that we could provide a greater amount of Internet bandwidth for state assessment testing," said Jim Rousseau, USD 501 general director of information technology. "All state assessments are done over the Internet now. That creates additional demand on our Internet bandwidth."

Many of the sites that were blocked because of state assessments were unblocked as of April 26, Rousseau said.

Baker, a 17-year-old Topeka West High School junior, said a blue block screen that pops up when he is conducting

research for papers on a subject for an honors class is going too far.

"I understand it's a public high school," Baker said. "Anything I can do on the Internet can be viewed." But he doesn't understand why the district should be able to view his personal email account when he is logged into it, or that the district has the capability to start keylogging, where every keystroke is recorded. He also said it is "hypocritical" that some entertainment sites are blocked, but students are allowed to access YouTube.

Rousseau said the district has a content filter called Light Speed in place to comply with the Children's Internet Protection Act, a federal law enacted by Congress to address concerns about access to offensive content over the Internet on school and library computers. CIPA imposes certain types of requirements on a school or library that receives funding for Internet access or internal connections from the E-rate program, which makes certain communications technology more affordable for eligible schools and libraries.

The Federal Communications Commission issued rules implementing CIPA in 2001. The district has had a content filter in place for many years. However, the filter was upgraded in January 2011.

"It is one of the better filters I have encountered," superintendent Julie Ford said.

"There are active agents in our filter that monitor what sites anyone goes to," Rousseau said. "If they are doing searches that become suspicious, like that are looking for something in regard to suicide, drugs or guns — typical things that could cause alarm — that is going to show up on some reports that people on the information technology team take very seriously."

Rousseau said he hears complaints from teachers, staff members and students about what is blocked "all the time."

On top of what content Light Speed selects to block, a three-person USD 501 Internet filtering committee, composed of the curriculum technology coordinator, media services coordinator and director of school improvement, selects content that should be blocked. If a teacher or student needs a site or certain content to be unblocked, paperwork must be submitted.

"We can give the teacher the capability to override the filter," Rousseau said. "We do that on a very exclusive basis."

USD 501 students, as well as teachers, administrators and staff members, also are blocked from Facebook. "That is probably the one we hear about the most," Ford said. "We will have that conversation at some point."

Campus View, Topeka West's student newspaper, recently ran an article written by senior Mitch Montague about blocking sites at USD 501.

"It has hindered me," Montague said about the district's content filter. "Everything we say and do is monitored now."
Reported in: *Topeka Capital-Journal*, May 10.

Sumner, Tennessee

A two-page oral sex encounter by an awkward teen at boarding school in the coming-of-age novel *Looking for Alaska* was deemed too racy by Sumner County schools in early May. The district banned the book from its assigned classroom reading list, becoming at least the second in the state, after Knox County in March, to keep students from reading it together in class. The teen novel is the first in several years to be stripped from Sumner classrooms.

"Kids at this age are impressionable. Sometimes it's a monkey see, monkey do," said parent Kathy Clough, who has a freshman and a senior at White House High School, where the book had been assigned reading. "I'm going to trust that my school board made the right choice. … If they feel like this book is a little too graphic, I'm all for it."

Station Camp High School English teacher Brittany Pratt said the book has some foul language but nothing students hadn't heard before. A sex scene was relatively minor, and the book won a 2006 Printz award for excellence in young adult literature.

"I think we get concerned anytime censorship is an issue, because where do we draw the line?" she said.

An English class at White House High read the book about a young man sent to a boarding school in Alabama who meets a girl, Alaska, who turns his life around.

Author John Green defended his work on a YouTube video in 2008 after similar scrutiny in a New York school.

"I am not a pornographer," he declared. The book draws on an "awkward, unfun, disastrous and wholly unerotic" scene that he said conveys a message to teens that physical intimacy can never stand in for emotional closeness.

A Sumner parent who skimmed the material complained to the Sumner school board that it was too explicit. The district reviewed it and ultimately pulled it from assigned class reading.

"Two pages in particular were graphic enough in sexual description that we felt it wasn't appropriate for the classroom," said Sumner County schools spokesman Jeremy Johnson. "You take somebody like Hemingway or a John Steinbeck and there can be some language or description that may make parents uncomfortable, but the value of a writer like that outweighs what controversy may be in the individual book." In this case, he said, the value didn't outweigh the controversy. The book was not pulled from any district library shelves, he said.

Two anti-censorship groups have asked the Sumner County schools to lift the ban. The National Coalition against Censorship and American Booksellers Foundation for Free Expression sent Sumner Director of Schools Del Phillips a letter May 15. It urged the district to honor its "constitutional obligation" and allow the White House High School English class to finish reading the student-selected novel.

"It is particularly disturbing that the complaint of one parent triggered a county-wide ban within the span of a

single week, without following established procedure and without so much as a review of the literary and educational merits of the book," the letter states. "The district has imposed one viewpoint on the entire student body, without regard to the educational consequences for students."

The groups claim Sumner County violated its own district policy, which says if a parent complains, that a student can be given an alternative book to read. Reported in: *Nashville Tennessean*, May 9, 16.

Greene County, Virginia

A Greene County couple wants an award-winning book removed from William Monroe High School. Georgie and Steve North say they are upset that their son, Nicholas, a freshman in the William Monroe Academy, was given the book *Feed*, by M.T. Anderson, to read. They say the book is "trash" and "covered with the F-word."

According to the inside cover of the Candlewick Press book, *Feed* is about "Titus, whose ability to read write and even think for himself has been almost completely obliterated by his 'feed,' a transmitter implanted directly into his brain. Feeds are a crucial part of life for Titus and his friends. After all, how would they know where to party on the moon, how to get bargains at Weatherbee & Crotch, or how to accessorize the mysterious lesions everyone's been getting? But then Titus meets Violet, a girl who cares about what's happening to the world and challenges everything Titus and his friends hold dear. A girl who decides to fight the feed.

"Following the footsteps of Aldous Huxley, George Orwell and Kurt Vonnegut, M.T. Anderson has created a not-so-brave world – and a smart savage satire about the nature of consumerism and what it means to be a teenager in America," the inside cover states. Among its many awards, *Feed* is a National Book Award Finalist and a Junior Library Guild selection.

Georgie North said the first time she had heard of the book was when her son brought it home in February. "I started to inquire why he hadn't read it," she said. "As I began to go through it, I began to see a lot of profanity.

"Page 239 had a lot of F words [and] had a lot of B words," North said. "When you get to page 267, it describes intercourse in a different kind of way, but never the same, it's what is going on here."

She said she is "furious" with Erik Nyrop, the William Monroe Academy teacher whose class is reading the book. "Out of all the books they could have pulled, why would you have given my child a book of profanity, talking about sex scenes and drug usage in this book," North said. "That's a 14-year-old minor child. There was no consent form sent home," she said. "We got no notice."

Nyrop said, however, that a consent form was sent home, and a notice that his class would be reading a mature book was posted on his webpage as well. He said he came across the book three or four years when a fellow English teacher brought the book to him.

Though it's in the same realm as the classics *1984* or *Brave New World* – books that are also constantly challenged in school – Nyrop said that he felt his students could relate more to *Feed*, which was first published in 2002.

"It's not six degrees of separation," Nyrop said. "It's right there."

The book is on Roanoke County Public Schools' recommended summer reading list for high-school students.

North brought her objection before the School Board during public comment at its April meeting. The board thanked her for her comments, but didn't take any action on them.

"There hasn't been any energy on it to be on the agenda for next month," School Board President Troy Harlow said. "… The two minutes we've had at the School Board meeting, that's all we've heard on it from her or anyone else."

But North said the reason there hasn't been any local uproar over the book is because "a lot of parents probably haven't even picked up the book and read it."

"I want the book removed from the school," she said. "My child shouldn't have to read it, nor should any other child have to read this book."

Nyrop said North's objection "is the only complaint I've gotten about it."

"In terms of this book, I've heard from one parent," said Greene County School Superintendent Dr. David Jeck, who noted that he leaves it up to the teachers and principals to select the curriculum.He said North's complaint is the first one he has received since he became superintendent at Greene. He added that North has "followed the chain of command very appropriately."

North said that when she brought the complaint to Nyrop, "He said it was art. … I said 'you call it art in the classroom, but if my child was to say the words that are in this book to one of you, call you like what's up F-head, but it's in [the book], what happens? Well, he gets three days out.'

"There are books in that [high school] library, that if they're read out of context, they could be offensive to people," Jeck said. "We need to give our students credit for being able to think abstractly. This book is basically good vs. evil, right vs. wrong," he said. "[Nyrop] tried to give kids something to read that is of interest to the students. I think it's commendable."

In the meantime, Nicholas North has been given *To Kill a Mockingbird* to read. The Harper Lee classic was the 10th-most challenged book in 2011, according to the American Library Association. Reported in: *Greene County Record,* April 25.

Richland, Washington

Richland School Board members sparred April 10 over whether the district's novel adoption process is ensuring

only the best and most appropriate books are ending up in classrooms.

The board approved all eight novels presented during its regular board meeting, but board member Phyllis Strickler voted against two of the novels. She went on to criticize the district's review process as being no better than the lack of safeguards that were in place years before and led to the board's review.

"Unfortunately, in my opinion, I still feel we don't have appropriate safeguards," she said.

The board directed Superintendent Jim Busey to put a discussion of limiting certain books to specific courses on a future board agenda. However, board Chairman Richard Jansons defended the board's process and the books being brought up for review. "I think there are safeguards and there is no perfect process unless we ban all novels," he said.

The board quickly approved four of the books, three of which had 100 percent recommendation by the district's Instructional Materials Committee, and one that had only one recommendation with reservations. Two other books also received unanimous approval from the board.

But the books *Smack* by Melvin Burgess and *Street Pharm* by Allison van Diepen didn't get such quick approval. The books are used in senior contemporary literature courses.

The discussion was similar to one had by the board earlier this year when three controversial books were up for review. Strickler said the books shouldn't be used for instructional purposes, citing their use of profanity, obscenity and sexuality. She said the district hasn't done enough to prevent subpar literature in the classroom and too much of the onus is on parents to ask for book lists from teachers to check the books themselves.

"I think we need to be challenging our students better than we are," she said.

Jansons said the district's procedures are adequate and that there are plenty of opportunities for students to opt out of reading controversial books. He added that the books are for the district's oldest students and it is the district's job to teach students to think critically—and that includes dealing with difficult subjects and language.

"These aren't 5-year-olds," he said. "We don't live in a Pollyanna world."

Strickler said it's not subject matter that is her issue, but the language used and that there are books with similar themes that could be used instead.

Two citizens, David Garber and Calvin Manning, also spoke on the subject. Garber asked the board to not approve *Smack* and *Street Pharm*. "I would argue much of the content in these books is indistinguishable from porn magazines," he said. Manning said the board should tighten up its policies to ensure books approved for specific courses aren't eventually used in lower grade levels. Reported in: *News-Tribune*, April 11.

student press

Columbia, Missouri

The former student editors of the University of Missouri at Columbia newspaper had faced campus discipline because their April 1 parody edition included a slur against lesbians before the university canceled those hearings. The managing editor, Abby Spudich, resigned this week after apologizing for jokingly retitling *The Maneater* as *The Carpeteater.* She said she didn't know that was an offensive phrase for lesbians. The editor in chief, Travis Cornejo, resigned shortly after that.

That seemed to be the end of it until Missouri's Office of Student Conduct contacted both former editors to schedule disciplinary hearings. *The Maneater* is an independent student publication. It wasn't immediately clear what university policy Spudich and Cornejo were accused of breaking. Students convicted of violating the university's standards of conduct can be suspended or expelled. The Student Press Law Center called on Missouri to drop the hearings, saying the language in the newspaper is protected by the First Amendment even if it was offensive. University officials didn't say why they canceled the disciplinary hearing. Reported in: insidehighered.com, April 13.

Newport News, Virginia

With prospective students on campus for tours of Christopher Newport University, a story in the student newspaper about a suspected meth lab in a residence hall wasn't the sort of publicity some administrators wanted.

So they ordered the removal of *The Captain's Log*, which had a front-page story recounting the evacuation of Wilson Hall on March 30. The removal was later overruled by the dean of admissions, who had the newspapers returned to the distribution stands after complaints from editor-in-chief Emily Cole.

CNU President Paul Trible issued a statement April 10 condemning the removal of the papers, which he said does "not reflect the custom, policy or practice of the university." He said the employees acted on their own initiative.

"This action was taken by young employees who love CNU and were concerned that a newspaper article would create a bad impression for visiting prospective students," Trible said. "Their actions were inappropriate and they will be disciplined in accordance with university procedures."

"*The Captain's Log* is free to write anything it pleases and CNU fully respects the freedom of the press," Trible said.

But Cole said she doesn't think Trible's statement went far enough, and she believes a lower-level employee would not have done it without orders from higher up. She confronted a "university fellow" — a recent graduate hired to work at CNU — carrying a stack of the papers. She said he told her he was just doing what he was told with "the

intention of putting them back after the tours were done for the day."

Natalie Shapiro, who wrote the meth lab story, said she saw several employees removing the papers soon after they were put on the stands and alerted Cole.

"If we're being censored now and we don't do anything about it, then we could be a PR magazine by next year, and that's not what we're for," Shapiro said. Reported in: *Richmond Times-Dispatch*, April 11.

colleges and universities

Pocatello, Idaho

Four days after a column by Leonard Hitchcock that was satirically critical of Idaho State University President Arthur Vailas appeared in the *Idaho State Journal*, the professor emeritus was fired from his part-time job at the university library.

The April 29 column by Hitchcock referred to President Vailas as "King Arthur" and said that "when there is seditious talk of political rights and faculty governance, the king must adopt a stern aloofness and wield his authority without hesitation."

Hitchcock had been acting head of special collections at the Eli M. Oboler Library on a part-time hourly wage since January. Dean of the ISU library, Sandra Shopshire, was out of the country on a Rotary exchange trip to Southeast Asia with her husband, so ISU librarian Jenny Lynne Semenza gave Hitchcock the news May 3.

According to Hitchcock, Semenza told him ISU interim provost Barbara Adamcik had called her and instructed her to tell Hitchcock he was fired.

Hitchcock is more than willing to comment on the loss of his job – one he did as an unpaid volunteer for five years before he began receiving $11 per hour in January.

"I can't say I was surprised," Hitchcock said. "I can only speculate, but it may be they only recently discovered they were paying me."

The column wasn't the first opinion piece written by Hitchcock which was critical of the Vailas administration and its handling of a lengthy dispute over shared governance on campus. In the past two years two faculty senates have been dissolved with the blessing of the Idaho State Board of Education. Elections for a new faculty senate will be held next fall. ISU remains without a faculty constitution and bylaws and faculty unrest led to votes of no confidence in previous Provost Gary Olson and President Vailas.

Hitchcock said he has watched the events unfold with a critical eye and he has shared his observations with Journal readers. He said he had witnessed what the calls a "widespread resentment of the authoritarian mode of this administration."

"It's a commonly held view among faculty that Vailas takes retribution," Hitchcock said. "It strikes me this (his firing) is a political reaction by the administration."

Before retiring in 2006, Hitchcock had been a full time professor at ISU for 21 years working as a humanities bibliographer and head of the collections division at the library. He served as acting dean of the library for one year. Prior to his arrival at Idaho State, Hitchcock taught at Cal State-Fullerton in California and Mohave Community College in Arizona. He was granted Professor Emeritus status by the university in 2006, the year Vailas was hired as president.

Although Hitchcock has served as a subsitute for the library's elected representative on the Provisional Faculty Senate at ISU during a couple of meetings during its one-year attempt to draft a new faculty constituiton this past school year, he said he really wasn't politically involved in campus politics during his career.

During his working hours at the university, Hitchcock said he has never written anything critical of the administration. However, columns written on his own time for a wider audience have taken the Vailas administration to task. He had sharp words for the administration's decision to ignore a faculty constitution approved by a 201 to 98 vote this past fall.

"It is no doubt disappointing for a monarch to discover that there are nay-sayers within his realm, but when this occurs, firmness and discipline are called for." Hitchcock wrote in Sunday's op-ed piece.

He said Thursday's firing proves his point.

Although the university has suspended his part-time pay, Hitchcock said he hopes to continue work he has started on important collections at the ISU library as a volunteer. He said he had made plans with Dr. Shopshire to create a display on the works and correspondence of Idaho journalist and politician, Perry Swisher and much of the preliminary work is done.

"It's a great collection," Hitchcock said before enthusiastically sharing snippets of Swisher's history. He shared that the longtime Idaho newspaperman also served as both a Democrat and a Republican in the Idaho Legislature and did a stint as a member of the Idaho Public Utilities Commission.

"He was a bit of a wunderkind," Hitchcock said. "His work would make a great display."

So even though the university administration has eliminated his paltry paycheck, Hitchcock plans to continue his work for ISU. "I guess I'll go back to being a volunteer, unless I'm banned from campus," he said. Reported in: *Idaho State Journal*, May 3.

Boone, North Carolina

Most agree that sexually explicit materials, including videos, can be academically relevant in sociology, gender studies and human sexuality courses, among others. But questions arise when instructors show those videos without first alerting those students and when students complain to administrators about the content.

Jammie Price, a tenured professor of sociology at Appalachian State University, was suspended in March after showing a documentary about pornography in her introductory sociology class. She's fighting the charges, saying the university is attempting to punish her for exercising her right to free speech in the classroom.

Price was accused of engaging in "inappropriate speech and conduct in the classroom" after four students and some of their parents complained to administrators. Among the charges were that she screened "*The Price of Pleasure*: *Pornography, Sexuality and Relationships*" without properly warning students about the anti-porn documentary's explicit content.

Price said the film, which she checked out from the university library, was graphic at times but academically relevant to that week's topic of gender and sexuality. A Wheelock College professor who helped make the movie said it was "ludicrous" to discipline an instructor for showing the documentary, noting that interviews with gender studies scholars figure prominently in the film, which is critical of the porn industry but also includes brief explicit scenes of porn.

Price's case lends itself to a wider discussion of how professors present relevant but potentially objectionable course materials—and how colleges respond when students complain.

John DeLamater, a University of Wisconsin at Madison professor of sociology and past editor of *The Journal of Sex Research*, said he's aired "*The Price of Pleasure*" in his own classes and believes it has academic value. But he said professors have a duty to inform students ahead of time when a movie is graphic and to allow those students to leave without any repercussions. Price did not warn students about the film's contents, but said they could have excused themselves after it started without any negative consequences.

DeLamater gives presentations on best practices for college sex educators. Among his tips are to consult with university attorneys before teaching a course on sexuality and to make sure students don't bring guests into the classroom. If students bring friends, he said that could constitute a public viewing and expose professors to punishment under local obscenity laws.

The university's punishment of Price resulted from issues beyond the film. Among the seven charges outlined in a March 16 disciplinary letter were that Price "made disparaging, inaccurate remarks about student athletes," strayed from her syllabus, forced her political views on students, said she didn't like working at the university and criticized the college for having an old white coal miner as its mascot. As a result, Vice Provost Anthony Gene Carey wrote in the letter, some "students … do not feel safe in your classroom" because of the "intensity of the hostility that you expressed toward the university and its administration."

Price, a tenured full professor, said she had originally planned a lecture for that day but decided to show the film instead after a student complained earlier in the week that Price was hostile toward athletes. That allegation, which was included in Price's disciplinary letter, centered on a classroom discussion about sexual assault accusations leveled against Appalachian State athletes and a resulting campus protest. The athletes' cases are being tried in campus judicial hearings, the results of which are not public. They haven't been charged in a criminal court.

Price said she feared the athlete who complained would think her lecture on gender and sexuality was a form of retaliation, so instead she decided to screen the film.

The offending discussion on athletes occurred on a Monday, the video was screened on Wednesday and the 60-person class discussed its content that Friday. That next week, over spring break, Price learned she was being placed on indefinite paid leave while campus officials investigated her conduct. Price—who said she is innocent of wrongdoing—believes she will be fired when the university completes its investigation.

Citing privacy laws, Appalachian State officials declined to comment. Faculty Senate chair Jill Ehnenn declined to comment on the specifics of Price's case. But Ehnenn said administrators have always supported her when students challenged course materials in her women's studies classes.

Adam Kissel, a vice president at the Foundation for Individual Rights in Education, criticized Appalachian State for instructing Price to not discuss her situation with students or fellow faculty members while the case is pending. While colleges have the right to investigate faculty members in some cases, Kissel said telling them to cut off communication with those on campus can prevent them from contacting potential witnesses for their defense.

Gail Dines, a professor of sociology and women's studies at Wheelock College, was a senior consultant for "*The Price of Pleasure*" and was interviewed in the film. She travels the country showing the film to college students and is a critic of pornography.

While she said professors should warn students about the content of the film and tell them they can leave without any repercussions (something Price didn't do), she can't understand why Appalachian State is taking action against Price. "This is what education is," Dines said. "You expose them to the reality of the world they live in and you use that exposure to develop a critical scholarly discussion in class, which is exactly what she did."

She said "*The Price of Pleasure*" has been screened at hundreds of colleges of all types nationally, and that she isn't aware of any other professors facing consequences for showing the film

Price, who has taught at Appalachian State for eight years, believes the disciplinary letter is a result of a long campaign to remove her—a sentiment that she said started years ago when she was critical of administrators. She says she has been falsely accused of serious misconduct in the

past and was accused of having sex with a student several years ago, an accusation she denies.

Price brought up that allegation in her sociology class this spring, something she was scolded for in her formal discipline. In the letter, Vice Provost Carey said that information "was unrelated to the course material outlined on the syllabus." Price said it was a meaningful way to engage students in a discussion about the seriousness of sexual assault.

Since being placed on leave last month, Price has retained a lawyer and has been working to clear her name. She said that she has wanted to leave Appalachian State for years, but hasn't because she shares custody of her young daughters with her ex-husband, a fellow Appalachian State faculty member.

Price doubts she'll keep her job after her formal hearing, and isn't sure she'd want to return to an Appalachian State classroom anyway. She's hoping to be cleared of wrongdoing, perhaps receive a severance payment and work on raising her children and writing fiction.

But first, she intends on seeing the disciplinary process through. To discipline someone for showing a serious academic film, she said, just isn't fair.

"Sometimes students are going to be uncomfortable," she said. "The material they learn isn't always going to be rosy. They talk about racism, they talk about sexism. Nowhere does it say we're supposed to make them feel good all the time. Talking about pornography is one of those examples." Reported in: insidehighered.com, April 23.

blog

Washington, D.C.

In early May, author Naomi Schaefer Riley posted a blog entry criticizing the field of black studies on Brainstorm, a blog maintained by Washington-based *Chronicle of Higher Education*. Riley's entry, titled "The Most Persuasive Case for Eliminating Black Studies? Just Read the Dissertations," contained a sharp critique of several doctoral theses featured in an earlier Chronicle article, "A New Generation of Black-Studies Ph.D.'s."

Riley's entry generated instant controversy: An online petition calling for her firing garnered thousands of signatories (now more than 6,500); Riley's fellow Brainstorm bloggers criticized her piece; and the graduate students themselves responded as well. Riley followed her initial post with a defense of its content and a response to her critics, and the Chronicle's editor, Liz McMillen, weighed in with a call for more discussion and debate. McMillen wrote:

"When we created the Brainstorm blog five years ago, we hoped it would be a forum for debate — where views about higher education, academic culture, and ideas could be aired and discussed and often challenged. It is a blog for opinion, sometimes strong opinions, not news reporting by the staff. The writers on the blog—13 in all, from institutions around the country—fall on different points of the ideological and political spectrum. They are not staff members of the Chronicle nor do they represent the views of the staff or of the newspaper.

"Many of you have asked the Chronicle to take down Naomi Schaefer Riley's recent posting, "The Most Persuasive Case for Eliminating Black Studies? Just Read the Dissertations." I urge readers instead to view this posting as an opportunity—to debate Riley's views, challenge her, set things straight as you see fit. Take a moment to read the Chronicle's front-page story about the future of black studies, written by Chronicle reporter Stacey Patton and weigh in."

That was Thursday, May 3. By Monday, May 7, McMillen had changed course, announcing in a follow-up post that the Chronicle had chosen to fire Riley. Stating that "[w]e now agree that Ms. Riley's blog posting did not meet the Chronicle's basic editorial standards for reporting and fairness in opinion articles" and that "we have made mistakes," McMillen promised a review of "editorial practices" and apologized for "the distress these incidents have caused our readers."

Riley's firing, in turn, generated another crush of controversy and prompted criticism from around academia and beyond. The *Wall Street Journal's* editorial page weighed in, sharply criticizing the decision, as did WSJ commentator James Taranto. Riley's former Chronicle colleague Peter Wood responded along similar lines, as did Roger Clegg and former Foundation for Individual Rights in Education (FIRE) President David French for *National Review Online* and Rod Dreher for *The American Conservative*. John Rosenberg at *Minding the Campus* and Ron Radosh of *PJ Media* also criticized the decision.

Media observers Jim Romenesko, New York University professor Jay Rosen, and Craig Silverman all authored reactions from a journalistic perspective. Silverman's piece featured an interview with Riley, who also wrote her own commentary on the firing for The *Wall Street Journal*. She writes:

> "My critics have suggested that I do not believe the black experience in America is worthy of study. That is not true. It's just that the best of this work rarely comes out of black studies departments. Scholars like Roland Fryer in Harvard's economics department have done pathbreaking research on the causes of economic disparities between blacks and whites. And Eugene Genovese's work on slavery and the role of religion in black American history retains its seminal role in the field decades after its publication.

> "But a substantive critique about the content of academic disciplines is simply impossible in the closed bubble of higher education. If you want to know why almost all of the responses to my original post consist of personal attacks on me, along with irrelevant mentions of Fox News, The *Wall Street Journal*, Newt Gingrich, Rick Santorum and George Zimmerman, it is because black studies is a cause, not a course of study. By doubting the academic worthiness of black studies, my critics conclude, I am opposed to racial justice—and therefore a racist."

Reported in: thefire.org, May 9.

publishing

Austin, Texas

For many scholars, a fitting way to honor a deceased colleague is to produce an anthology of related work. At the Center for Middle Eastern Studies at the University of Texas at Austin, that was the thinking behind plans for a volume of fiction and other writing by women in the Middle East. The anthology was to honor the late Elizabeth Fernea, who in her years at Texas had helped build up the study of the region and who promoted the publication in translation of works from the many countries there.

In the last week, however, the project fell apart—as the movement to boycott Israel in every possible way left Texas officials believing that they couldn't complete the work.

The anthology was to have been published in conjunction with the University of Texas Press, and 29 authors agreed to have works included. Then one of the women found out that two of the authors were Israelis. She then notified the others that she would withdraw her piece unless Texas excluded the two Israelis. When the university refused to do so, a total of 13 authors pulled out. A few others wouldn't tell the center whether they were willing to go ahead with the project, and without assent from those authors, it was not clear that the anthology would include a single Arab author. (The other authors besides the Israelis were from non-Arab parts of the Middle East.)

Kamran Scot Aghaie, director of the center at UT, said that it "would not have been academically sound" to do the book without any Arab authors, but that it wouldn't have been academically or ethically sound to exclude the Israelis. Since the Arab authors wouldn't participate, the book was scrapped.

Aghaie said that several of the authors who pulled out told him that they objected to his not telling them in advance that there would be Israelis in the volume. He said he rejected that idea—not only for this book but for any future work.

"My view is that it's not proper to single out individual contributors for other contributors to veto. We were not willing to give any group special treatment," he said.

Further, Aghaie said that he does not believe academic institutions should be involved in boycotts of academics or writers in other countries. Aghaie said he understands the idea behind boycotts generally. He describes himself as someone who is "highly critical of the tactics Israelis and Palestinians have been using against each other." But whatever one thinks of Israel, he said, there is no reason to refuse to work with Israeli academics or authors—or to expect other universities to assist in such a boycott—as some of the authors expected Texas to do with regard to calls by some pro-Palestinian groups to boycott anything or anyone connected to Israel.

"As an academic institution, we cannot censor people for the country they are from," he said. And he also noted that the boycott of Israel is a boycott of Jewish Israelis, not other Israelis, whose participation does not raise objections. Even if one feels boycotts are appropriate for, say, companies that engage in particular activities, "academics need to be an exception," he said. "As a publishing press or as a program, it's not appropriate for us to single out anyone based on religion or national origin," he said. "To do so is simply discrimination, and it's wrong."

"The last thing you want to do is cut off dialogue. That's the stupidest thing one would do," he said. Not only should academics and authors be talking across borders, they should recognize that they don't necessarily represent their governments' views. Many American academics, for example, opposed the U.S. invasion of Iraq, and would not want to be boycotted because they couldn't prevent that invasion from taking place. Academics need to be seen as individuals, he said, including Israeli Jewish academics.

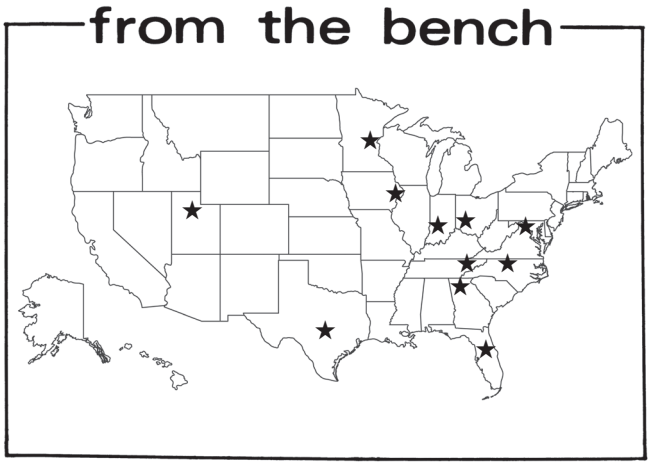
"When Iran executes a gay man, I'm not guilty of that," said Aghaie, an Iranian-American. "I didn't do that. I would never support that."

Aghaie said that, as leader of a center that tries to involve people from many countries and perspectives in its programs, he worries about intolerance. He said that he has, in the past, fended off complaints from some people who view with distrust Muslim speakers he has invited to campus. The idea that the academic boycott of Israel is taking hold in ways that affect places like the University of Texas bothers him. "That's what really worries me," he said. "It's so self-defeating on so many levels to try to keep people out. We have to have academic engagement with all sides."

Gulf News [United Arab Emirates] ran an editorial praising Huzama Habayeb, the Palestinian writer who organized the boycott from Abu Dhabi, where she lives. The editorial described her as smiling upon finding out that the anthology had been called off.

"Habayeb's actions are those of a resistance

(continued on page 182)



U.S. Supreme Court

Secret Service agents who arrested a man after he disparaged and then touched Dick Cheney cannot be sued for violating the man's free speech rights, the Supreme Court ruled June 4.

When then-Vice President Cheney visited a Colorado mall in 2006, Secret Service agent Dan Doyle overheard Steven Howards say that he was "going to ask [the vice president] how many kids he's killed today." Howards then got in line to meet Cheney and, when he reached the vice president, told him that his "policies in Iraq are disgusting." As Cheney moved along, Howards touched him on the shoulder, prompting the supervising Secret Service agent, Gus Reichle, to accost and arrest Howards for assault.

After the charges were dismissed, Howards sued the agents, claiming they arrested him in retaliation for exercising his First Amendment right to criticize Cheney. The U.S. Court of Appeals for the Tenth Circuit ruled in Howards' favor.

The Supreme Court unanimously reversed the appeals court. Justice Clarence Thomas, writing for the court, rejected Howards' argument that the "general right to be free from retaliation for one's speech" put the Secret Service officers on notice that their behavior was unconstitutional, thereby opening them up to liability. The justices instead held that the Secret Service agents were entitled to immunity because no federal court had clearly established the "specific right to be free from a retaliatory arrest that is otherwise supported by probable cause."

If government officials are to be sued for violating the Constitution in doing their jobs, Thomas wrote, "[W]e have previously explained that the right allegedly violated must be established 'not as a broad general proposition' ... but in a 'particularized' sense so that the 'contours' of the right are clear to a reasonable official."

Justice Ruth Bader Ginsburg, joined by Justice Stephen Breyer, issued a concurring opinion. "Were defendant ordinary law enforcement officers," Ginsburg wrote, she would have allowed Howards' suit to move forward. But because Agents Reichle and Doyle were Secret Service agents required to "make singularly swift, on the spot, decisions whether the safety of the person they are protecting is in jeopardy," Ginsburg held that the men "were duty bound to take the content of Howards' statement into account in determining whether he posed an immediate threat to the Vice President's physical security."

The case was *Reichle v. Howards*. Reported in: huffingtonpost.com, June 4.

The Supreme Court agreed May 21 to hear a case concerning the government's use of electronic surveillance to monitor the international communications of people suspected of having ties to terrorist groups.

The justices agreed to decide whether a challenge may proceed to a 2008 federal law that broadened the government's power to monitor international communications. The law, an amendment to the Foreign Intelligence Surveillance Act, followed disclosure of the Bush administration's secret program to wiretap international communications without obtaining court warrants in the wake of the September 11 attacks.

The 2008 law was challenged by Amnesty International, the American Civil Liberties Union and other groups and individuals, including journalists and lawyers who represent prisoners held at Guantánamo Bay, Cuba. The plaintiffs said the law violated their rights under the Fourth Amendment by allowing the government to intercept their international telephone calls and e-mails. Some of the plaintiffs say they now meet clients or sources only in person.

The Obama administration has defended the law and contends that the plaintiffs have not suffered an injury direct enough to give them standing to sue. Last year, a unanimous three-judge panel of the United States Court of Appeals for the Second Circuit, in New York, ruled for the plaintiffs on that threshold question.

Judge Gerard E. Lynch, writing for the court, said the plaintiffs had shown that they had a reasonable fear that their communications would be monitored and had taken "costly measures to avoid being monitored." That was enough, he wrote, to establish standing to challenge the law. The panel did not rule on whether the law violated the Fourth Amendment's ban on unreasonable searches.

The full Second Circuit declined to rehear the panel's ruling by a 6-to-6 vote.

In allowing the suit to move ahead, Judge Lynch wrote that the law increased the risk that the communications of American citizens would be intercepted, made it easier for the government to monitor suspects' communications and relaxed judicial supervision.

In urging the Supreme Court to hear the case, *Amnesty International v. Clapper*, the administration said the plaintiffs should not be allowed to rely on "asserted future injuries that are conjectural and not imminent and on self-inflicted harms" to establish standing to sue. Reported in: *New York Times*, May 21.

libraries

Atlanta, Georgia

A federal judge on May 14 outlined many ways colleges can continue to cite the doctrine of "fair use" to permit their making electronic copies of books and other materials for use in teaching and scholarship. In a landmark ruling over many issues not previously litigated to this degree in the digital era, the judge rejected many of the claims in a suit by three prominent publishers against Georgia State University.

In 94 of the 99 instances cited by the publishers as copyright violations, the judge ruled that Georgia State and its professors were covered by fair use. And the judge also rejected the publishers' ideas about how to regulate e-reserves—ideas that many academic librarians said would be unworkable.

At the same time, however, the judge imposed a strict limit of ten percent on the volume of a book that may be covered by fair use (a proportion that would cover much, but by no means all, of what was in e-reserves at Georgia State, and probably at many other colleges). And the judge ruled that publishers may have more claims against college and university e-reserves if the publishers offer convenient, reasonably priced systems for getting permission (at a price) to use book excerpts online. The lack of such systems today favored Georgia State, but librarians who were anxiously going through the decision were speculating that some publishers might be prompted now to create such systems, and to charge as much as the courts would permit.

The 340-page decision by Judge Orinda D. Evans is a pivotal point in years of litigation brought by Cambridge University Press, Oxford University Press and Sage Publications—with backing from the publishing industry. Many experts expect this case to assume a role that cases against Kinko's (decided in 1991) and Michigan Document Services (decided in 1996) played in defining copyright issues for printed coursepacks. But the Georgia State decision doesn't end the legal hearings (even if there isn't an appeal). Evans ordered the publishers to propose remedies for the violations she found, and new hearings will be held on those proposals.

While the legal analysis may take time, both publishers and academic librarians have reacted strongly throughout the case. Publishers argued that their system of promoting scholarship can't lose copyright benefits. Judge Evans in her decision noted that most book (and permission) sales for student use are by large for-profit companies, not by nonprofit university presses. But the Association of American University Presses backed the suit by Cambridge and Oxford, saying that university presses "depend upon the income due them to continue to publish the specialized scholarly books required to educate students and to advance university research."

Many librarians, meanwhile, have expressed shock that university presses would sue a university for using their works for teaching purposes. Barbara Fister, a librarian at Gustavus Adolphus College, said, "It still boggles my mind that scholarly presses are suing scholars teaching works that were written to further knowledge."

The reserve readings at the crux of the dispute are chapters, essays or portions of books that are assigned by Georgia State professors to their undergraduate and graduate students. (While the readers are frequently referred to as "supplemental," they are generally required; "supplemental" refers to readings supplementing texts that the professors tell students to buy.) E-reserves are similar to the way an earlier generation of students might have gone to the library for print materials on reserve. The decision in this case notes a number of steps taken by Georgia State (such as password protection) to prevent students from simply distributing the electronic passages to others.

Judge Evans devoted much of the decision to whether Georgia State's use of e-reserves was consistent with the principles of fair use. She noted that the fair use exemption in federal law requires consideration of four factors (although the law is vague on exactly how the four factors should be weighed). The four factors are:

1. "The purpose and character of the use," including whether the use is "for nonprofit educational purposes."
2. "The nature of the copyrighted book."
3. "The amount and substantiality of the portion used."
4. The impact of the use on "the market" for sale of the book or other material.

Evans found that the first two factors strongly favored Georgia State. The university is a nonprofit educational institution using the e-reserves for education, she noted. Further, she found for Georgia State on the second factor, noting that the works in question were nonfiction and "informational," categories she said were appropriately covered by fair use.

The analysis of the third and fourth factors was less straightforward to Judge Evans. She began by rejecting a claim of the publishers that a 1976 agreement between publishers and some education groups should govern fair use for e-reserves. That agreement was "very restrictive," she wrote. For example, only work that did not exceed 2,500 words was covered. Still other limits were set on how many

times an instructor could invoke fair use in a single course.

While rejecting the 1976 agreement, Judge Evans concluded that there are legitimate questions about how much material may be used. In a sign of just how complicated the issues are, she noted that the publishers asked her to base any percentages on only the text portion of a book (excluding introductory pages, footnotes and concluding tables) while Georgia State wanted everything counted. Evans based her percentages on Georgia State's view that the book is the entire book.

Her challenge, she wrote, was to determine what size excerpts are "small enough" to justify fair use. Here, after reviewing a range of decisions, Evans settled on ten percent of a book (or one chapter of a book) as an appropriate measure, allowing professors enough substance to offer students, while not effectively making a large portion of the book available.

On the fourth factor (market impact), Evans wrote that there is a clear impact if and only if the publisher has a system for selling access to excerpts that are "reasonably available, at a reasonable price." The reason this prong did not help the publishers more in the case was evidence cited by the judge that much of the material in question was not available through an online licensing program. So Georgia State did not have the "reasonably available option."

At various points in the decision, Evans also weighed the intent of both copyright protection and fair use in the context of the case, generally with an analysis that was sympathetic to Georgia State. "Because the unpaid use of small excerpts will not discourage academic authors from creating new works, [it] will have no appreciable effect on plaintiffs' ability to publish scholarly works, and will promote the spread of knowledge," she wrote.

Further, she rejected the idea that Georgia State's actions have had a significant impact on the ability of the publishers to sell books. But she did see an economic cost to students of passing along more of the cost of materials. "Plaintiffs offered no trial testimony or evidence showing that they lost any book sales in or after 2009 on account of any actions by anyone at Georgia State. The court finds that no book sales were lost," Judge Evans wrote. The publishers lost only "a small amount" of permissions revenue.

"If students at Georgia State had been required to pay for use of small excerpts of plaintiffs' works in 2009, there would have been some small overall increase in the cost of education, assuming that the charge for excerpts would be included in the tuition and spread across the student body," Judge Evans added. "If individual students had to pay the cost of excerpts, the total of all permissions payments could be significant for an individual student of modest means."

Kevin Smith, scholarly communications officer at Duke University, was among the first to offer a detailed analysis of the ruling. In a blog post receiving praise from many librarians, he wrote that there was "good news for libraries" in the decision, but also some challenges for professors, librarians and publishers. "Most of the extreme positions advocated by the plaintiff publishers were rejected."

Smith noted that this may send a message to publishers. "It suggests that suing libraries is an unprofitable adventure, when 95 percent of the challenged uses were upheld," he wrote. At the same time, however, he added that there are "uncertainties" in the ruling.

The ten percent rule for share of a book that can be used, he said, "is a less flexible standard than many libraries would like, I think, and it seems too rigid to be a good fit with the overall structure of fair use." (The decision noted that the excerpts examined by the court averaged 10.1 percent of book length, with many well below the 10 percent threshold and some well above it.)

Fister of Gustavus Adolphus said that she too was relieved that the judge had rejected many of the publishers' arguments. But she also saw "problematic issues" for librarians and professors.

She noted that the ruling requires colleges to apply analysis of all four factors in determining, case by case, what is permitted. The judge issued her decision nearly a year after the trial in the case started, suggesting that it "requires a lot of time and a lot of legal discovery" to make these determinations. This is particularly difficult, she said, in the requirement of knowing something of publishers' revenue streams to analyze the market impact of making a portion of a given work available for students. Fister said that the finding that 94 of 99 instances were properly covered by fair use might have suggested college libraries be given more leeway.

"The other thing I come away with is that publishers that get their act together and make it easier for institutions to pay licenses will make it much harder for academics to claim fair use for e-reserves," Fister said. "Even large publishers have been cautious about making permissions too easy, as two of the three plaintiffs do not make their content widely available for licensing. Sage has made it slick, and four of the five findings against fair use were for Sage titles. This will favor large publishers and perhaps publishers that require authors to treat their scholarship as work for hire before it's published because it will be easier to license that work and reap new profits from it."

Although librarians in higher education have generally cheered the decision, the Association of American University Presses issued a statement a week after the ruling that raised questions about the decision. The university press association, which has backed the publishers, said it was "premature and unwise for anyone to declare victory or defeat." At the same time, the association said of the ruling: "[I]ts interpretation of the law is controversial and unprecedented in several important respects, and it appears to make a number of assertions of fact that are not supported by the trial record." Reported in: insidehighered.com, May 18, 21.

schools

Waynesville, Ohio

A federal district judge has approved an agreement that permits an Ohio student to wear a pro-gay T-shirt to his high school whenever he chooses.

Maverick Couch, a student at Waynesville High School, faced a threat of discipline when in April 2011 he wore a shirt that said, "Jesus Is Not a Homophobe" on the National Day of Silence, a day for students to show support for gay rights and tolerance.

The principal of Waynesville High allegedly told him that the shirt was disrupting school and that it promoted a religious message and that "religion and state have to be separate." He was barred from wearing the shirt.

Couch and his parents turned to Lambda Legal Defense and Education Fund, a gay rights organization, to press the school district to drop the ban. They argued that the shirt's message was clearly speech protected by the First Amendment.

In a February 24 letter to Lambda Legal, a lawyer for the school district said that he disagreed that the T-shirt was protected. The district's lawyer asserted that the message communicated by the shirt was "sexual in nature and therefore indecent and inappropriate in a school setting."

Couch and his parents sued the school district in April, and in May the district agreed to a judgment in the student's favor.

On May 21, U.S. District Court Judge Michael R. Barrett of Cincinnati accepted the "agreed judgment" in Couch v. Wayne County Local School District. Barrett ruled that Couch was the prevailing party and that the student "is expressly permitted to wear the 'Jesus Is Not a Homophobe' T-shirt to school when he chooses."

The judgment awarded a total of $20,000 in damages, costs, and attorney's fees to the Couch family and their lawyers. Reported in: Education Week, May 21.

colleges and universities

Minneapolis, Minnesota

A federal appeals court has rejected a Turkish advocacy group's assertions that the University of Minnesota-Twin Cities defamed it and violated its First Amendment right to free speech by branding the group's Web site as unreliable and unworthy of students' use.

In a ruling issued May 3 a three-judge panel of the U.S. Court of Appeals for the Eighth Circuit unanimously upheld a federal district court's decision last year to dismiss the Turkish Coalition of America's claims against the university. Criticism of the coalition's Web site had been posted online by the university's Center for Holocaust and Genocide Studies. The ruling said the university center had been expressing opinion, not factual claims that conceivably could be proved wrong and defamatory, when it branded as an "illegitimate source of information" and otherwise criticized as unreliable the coalition's Web site, which challenges claims that Armenians were victims of genocide a century ago by Ottoman Turks.

Noting that the coalition's Web site remains accessible to anyone who wants to view it, the appeals judges also rejected the group's argument that the center had infringed on the coalition's First Amendment speech rights by discouraging students from using the site.

Not surprisingly, the case has been closely followed by historians. But the case has also been tracked by scholars concerned about academic freedom generally, some of whom worried that a dangerous precedent could have been set by a suit against an academic center for expressing its views on areas of scholarship. The Middle East Studies Association, for example, called on the Turkish Coalition of American to withdraw the suit.

"We fear that legal action of this kind may have a chilling effect on the ability of scholars and academic institutions to carry out their work freely and to have their work assessed on its merits, in conformity with standards and procedures long established in the world of scholarship," said a statement from the group.

An irony of the case is that the label of "unreliable" was removed from the Minnesota website—at about the time the Turkish coalition was criticizing it but before the suit was filed in 2010. Minnesota officials said that they didn't want to send anyone to the websites that cast doubt on the Armenian genocide, so they removed the list of "unreliable" websites from a webpage with teaching and research links. However, the university has defended the right of the research center to have had the list up in the first place, and most of the appeals court decision is written as if Minnesota still had such a link.

On the First Amendment issue, the Turkish coalition cited court rulings in which, for example, secondary schools were found to be violating First Amendment rights of students by removing certain books from the library. The appeals court noted that those cases were based on blocking access to information—something that the court said the University of Minnesota never did.

"There is no allegation that the defendants impaired students' access to the TCA website on a university-provided Internet system," the appeals court's decision says. "There is no hint in the complaint that university students were not free to, for example, read the TCA website, e-mail material from the TCA website to their friends, regale passers-by on the sidewalk with quotes from the TCA website, and so forth. In short, TCA's website was not 'removed' from the university in any sense."

The Turkish coalition's appeal argued that the Minnesota website defamed the coalition by saying it engages in "denial" of the Armenian genocide, by calling it "unreliable," by saying that it features a "strange mix of fact and opinion," and that it is "an illegitimate source of

information." The coalition argued that by labeling its website a "denial" website, the Minnesota center was maligning it because the term "denial," in the context of the study of genocide, "implies denial of well-documented underlying facts associated with a genocidal event."

The appeals court ruling, however, says that the issue is whether the coalition denies the Armenian genocide. "Because the TCA website does, in fact, state that it is 'highly unlikely that a genocide charge could be sustained against the Ottoman government or its successor' based on the historical evidence, the center's statement under this interpretation is true and, thus, still not actionable," the appeals court decision says. "The remaining three statements can be interpreted reasonably only as subjective opinions, rather than facts," the opinion adds, rejecting the defamation charges there as well. Reported in: *Chronicle of Higher Education* online, May 3; insidehighered.com, May 4.

Elon, North Carolina

A North Carolina appeals court has ruled that private colleges' police records are not public records. The ruling came in a case brought by a one-time student journalist who filed an open records request seeking records from Elon College about a student's arrest. The appeals court said that the private institution was not covered by the open records requirements.

The Student Press Law Center criticized the ruling. Frank LoMonte, executive director of the association, said, "Getting more information about crime into the public's hands does nothing but good. There's no good argument why a crime that takes place in the quad of a private college should be kept secret, while the same crime would be public if it took place in the middle of a Pizza Hut." Reported in: insidehighered.com, June 6.

Cookeville, Tennessee

Generally court rulings have upheld the right of public colleges to exercise some rules on visiting speakers, but various appeals courts have also found several instances where those rules were deemed too restrictive. In the latest such ruling, the U.S. Court of Appeals for the Sixth Circuit found in late April that several procedures at Tennessee Technological University—including a required application 14 days before the event, and a stipulation that the nature of the event be described—were unconstitutional.

The appeals court ruling reversed a district court's findings, and revived the lawsuit of John McGlone, an itinerant preacher who wanted to speak at the university. McGlone sued after he tried to speak on campus in 2009, and was told he could only receive permission to speak in one limited area, and only if he followed the various rules in place about visiting speakers.

Limitations on free speech at public institutions (higher education and others) are generally evaluated in federal courts on the reasonableness of "time, place and manner" restrictions. So while a public university can't bar all protests, and can't bar protests of some ideas and not others, it can bar activities when their exact time, place or manner may create a compelling reason to regulate them. For example, colleges would generally be on solid ground banning protests that disrupt classes or endanger public safety. But public universities, when challenged, must show why their rules were reasonable—something they have sometimes failed to be able to do.

In other cases brought by visiting preachers, federal appeals courts have ruled that public institutions can't assert blanket authority to bar speakers whose security costs aren't covered by student groups or some other entity, or set strict limits on the number of visits by a speaker. But appeals courts have upheld the requirement of some advance notice (such as three days, as was the case at the University of Arkansas at Fayetteville) as acceptable.

In the Tennessee Tech case, the appeals court ruled that requiring McGlone or others to register 14 days in advance was "much longer than other notice periods that have been upheld," and that the university failed to provide "an explanation for the need" for such a lengthy requirement. As a result, the appeals court said, Tennessee Tech has failed to demonstrate that the requirement was "narrowly tailored."

The court also rejected Tennessee Tech requirements that those seeking a permit to speak on the campus must provide information on who they are, describe the program's purpose, and stipulate whether the event is "political" or "religious." The appeals court noted that the right to free speech includes anonymous speech, which would be precluded by these requirements. And the appeals court noted McGlone's belief that the question about whether an event might be political or religious could help a university discriminate in its determinations on the basis of the content of an event. Again, the appeals court found that Tennessee Tech had failed to justify its policy as being "narrowly tailored" or appropriate.

The case will now return to the district court, which will reconsider the case based on the appeals court's ruling. A spokeswoman for Tennessee Tech said that lawyers were studying the ruling, and that the institution would not comment at this time. Reported in: insidehighered.com, April 30.

Internet

Salt Lake City, Utah

People cannot be prosecuted for posting content constitutionally protected for adults on generally-accessible websites, and are not required by law to label such content that they do post, U.S. District Court Judge Dee Benson held May 17. Judge Benson's order was issued in a lawsuit

challenging a Utah law that threatened the free speech rights of online content providers and Internet users. Plaintiffs included a Utah artist; trade associations representing booksellers, publishers, graphic and comic books, and librarians; the ACLU of Utah; and the Freedom to Read Foundation.

In 2005, the Utah legislature extended to electronic communications its existing law regulating the distribution of "harmful to minors" content—that is, speech that adults have a First Amendment right to receive but that minors do not. Plaintiffs, led by the Media Coalition, filed this lawsuit that year, arguing that the broadly worded Utah law violates the First Amendment by prohibiting lawful adult-to-adult communications on the Internet simply because a webpage or blog may be seen by a minor, while also compelling online speakers to label or rate such content. According to the Media Coalition, similar overbroad statutes in other states have been held unconstitutional, or have been limited by the courts in a manner similar to the judgment entered in this case.

Plaintiffs' counsel worked out an agreement with Utah Attorney General Mark Shurtleff on how the law would be implemented, and the new order makes clear that the only people who can be prosecuted under the statute for electronic communications are those who intentionally send "harmful to minors" materials to a specific individual known or believed to be a minor, or who send such material to a minor having negligently failed to determine the age of the recipient. The order also narrowed the mandatory labeling provision in light of advances in Internet filtering software since the statute was enacted in 2005.

"This is a critical victory for free speech," said David Horowitz, executive director of Media Coalition, an organization that represents the trade associations of booksellers; publishers; graphic and comic books; and librarians. "This declaratory judgment makes clear that adult-to-adult communications on the Internet, and through other electronic means, cannot be restricted simply because minors also access the Internet and other electronic communications."

"Judge Benson's order removes the cloud cast over Internet speech that Utah's broadly worded statute had created," said John Mejia, Legal Director of the ACLU of Utah. "With this declaration, the ACLU of Utah can continue to make information such as our 'Know Your Rights' materials for students and LGBT youth available online without fear of possible prosecution for doing so."

"This judgment brings the Utah law into line with 15 years of legal precedent protecting the constitutional rights of adults to access lawful content online," said Emma Llansó, Policy Counsel at the Center for Democracy & Technology. "It also underscores that the best approaches to protecting children online rely on user empowerment tools."

"We are grateful to Attorney General Shurtleff for recognizing that this narrow construction of the statute fully serves Utah's interest in protecting minors, while also protecting our First Amendment rights," said Michael Bamberger, lead counsel for plaintiffs. "The resolution by agreement of the parties would not have been possible without the assistance of Judge Benson."

Plaintiffs included Nathan Florence, American Booksellers Foundation for Free Expression; Association of American Publishers; Comic Book Legal Defense Fund; Freedom to Read Foundation; and the ACLU of Utah. They were represented by Michael Bamberger and Richard Zuckerman of SNR Denton US LLP, which is general counsel to Media Coalition and by the ACLU of Utah and the Center for Democracy & Technology. Reported in: Publisher's Weekly, May 18.

surveillance

Sioux City, Iowa

A federal judge in Iowa has ruled that evidence gathered through the warrantless use of covert GPS vehicle trackers can be used to prosecute a suspected drug trafficker, despite a Supreme Court decision this year that found such tracking unconstitutional without a warrant.

U.S. District Court Judge Mark Bennett in Sioux City ruled in April that the GPS tracking evidence gathered by federal DEA agents last year against suspected drug trafficker Angel Amaya, prior to the Supreme Court ruling, can be submitted in court because the agents were acting in good faith at the time. The agents, the judge said, were relying on what was then a binding U.S. Court of Appeals for the Eighth Circuit precedent that authorized the use of warrantless GPS trackers for surveillance in Iowa and six other states.

It's the third such "good faith" rulings by federal court judges in the wake of the recent and historic Supreme Court decision, all of which illustrate that the Supreme Court ruling can be easily skirted by law enforcement agents and prosecutors who work in circuit court regions where it was previously legal to use the devices without a warrant.

Legal experts say the "good faith" exception, which comes out of another court ruling last year, has created a mess of the Supreme Court's GPS decision.

"[I]t is a bit of an end-run around for law enforcement," said Hanni Fakhoury, staff attorney for the Electronic Frontier Foundation. "And it leads to disparate results because whether [GPS evidence] gets suppressed or not depends on what the law of the circuit was prior to *Jones*."

Circuit courts in the Seventh (covering Illinois, Wisconsin and Indiana), Eighth (covering Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota) and Ninth (covering Alaska, Arizona, California, Guam, Hawaii, Idaho, the Mariana Islands, Montana, Nevada, Oregon and Washington) circuits all ruled prior to the Supreme Court

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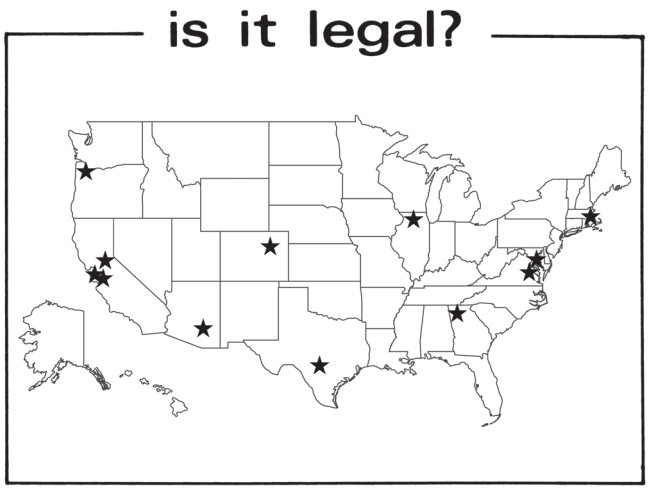


libraries

Beaverton, Oregon

One evening inside a library computer room, two boys reportedly saw a man next to them look at pornography and appear to masturbate under his jacket. The boys, ages 11 and 12, texted their father, who had an "immediate fear" for his children and drove to the Beaverton City Library with his wife. The parents saw the man with his left hand moving near his groin while a porn website was open on his computer, but he was not exposed, according to a Beaverton police report. Library staff then called authorities. On April 2, officers arrested the man on an accusation of second-degree disorderly conduct.

Over the last year, the library had five incidents related to pornography or public masturbation. Of those, only one was arrested and banned from returning to the library for thirty days.

What gets someone booted from the library, and for how long, varies depending on the opinion of whatever library staffer happens to be available. "It's somewhat ad hoc," said Ed House, the library director.

House, however, said he is working with the City Attorney's office on standard guidelines for disciplining unruly behavior. "We want to get that formalized," House said.

Library staff can't always track who's doing what on a computer, though they regularly patrol the grounds, House said. Roughly 2,800 people on average visit the main library and Murray Scholls branches each day. Staffers frequently deal with lesser offenses, such as a patron borrowing a friend's library card to stay past the hour-long limit on a computer, according to the library's internal incident reports. Staying past the limit, loud outbursts of profanity and disturbance of other patrons all could get someone kicked out.

If staff are told that someone is watching porn, which is against library policy, they may ask the offender to close the site, leave immediately, or, in some cases, stay away for a number of days. Unless staff witness it firsthand, however, they are wary of assuming that a person is guilty, House said.

"Sometimes it's a tough decision, a tough call," said House, who has worked at the library for 11 years. "If we tell them again days later, they may be excluded." That discretion has led to differing consequences for similar incidents, according to the library's reports.

In January 2011, a 54-year-old man was told to shut down his computer after staff caught him looking at porn. He was banned from the library for a week. In July, a 38-year-old man was told to stop looking at a "Hot Women in Love" website and was excluded for a day. In October, a 13-year-old boy who was looking at porn was given a warning and told to leave the library for the night. In December, a 12-year-old boy told staff he saw a man in his mid-30s bobbing his hand up and down under his coat. When staff confronted the man, he denied the action. Staff did not ask the man to leave.

And mostly recently, on April 2, staff noted that the arrested man had been warned about this behavior before and asked him to log off and leave. He has been banned until May 1.

House said the case was different because there were several witnesses. The man also specifically told officers that he looked at porn and that he touched himself, according to the police report.

Library filters for pornography and other obscene content have long garnered intense debate. In 2003, a divided Supreme Court ruled that a federal law blocking pornographic Internet sites on public library computers did not violate the First Amendment. Multnomah County Library was one of the plaintiffs challenging the Children's Internet Protection Act, saying filters should be set at the local level.

Three years later, the Beaverton City Council chose the strictest filters for library patrons. Adult web searches were to default to a filtered setting. Computers in the children's area would have the highest level of filtering.

Now, however, adult patrons can choose filtered or unfiltered search results from a drop-down menu on the second floor of the library.

Washington County Cooperative Library Services, the umbrella agency for all city libraries in the county, lets each library choose which filters to apply, and how, said Eva Calcagno, the agency's director.

For example, libraries could apply adult or child level filtering based on the age of the patron who logs on. They could also choose to unblock sites that have legitimate content but get restricted through the filter, she said.

Dennis Marley, a Beaverton resident and retired police detective, said he contacted city staff to consider setting a higher default filtering level for all adult searches.

"They need to do something to end it now," Marley said. "That's simply putting the filters on... Children shouldn't

have to be in that kind of environment." Reported in: *Portland Oregonian,* April 18.

schools

Geneva, Illinois

A mother who says her middle-school daughter was forced to let school officials browse the 13-year-old girl's private Facebook page is speaking out against the practice because, she says, "other parents are scared to talk about it."

Pam Broviak, who lives in the Chicago suburb of Geneva, said her daughter was traumatized when the principal of Geneva Middle School South forced the child to log in to her Facebook account, then rummaged through the girl's private information.

"What a violation of my daughter's privacy this whole episode was," Broviak said. The incident took "a huge toll on my daughter, who ended up crying through most of the rest of the day and therefore missed most of her classes. She was embarrassed and very upset."

There have been several descriptions lately of Facebook prying by schools – and one lawsuit was filed recently by the American Civil Liberties Union on behalf of an anonymous plaintiff against a school district that allegedly demanded a student's social media passwords. But Broviak may be the first parent to go public with concerns about what she sees as serious violations of student privacy.

Broviak said she confronted school officials about the incident involving her daughter soon after it occurred last fall and was told that they routinely investigate student issues by asking kids to log into their social networking pages or cell phones in the presence of administrators. And she said her daughter and other students told her they are frequently called into the principal's office and told that they can't leave until they surrender their passwords or unlock their phones and allow school officials to browse their personal information.

"(Students) let them see the accounts because otherwise, they are not allowed to leave the room. And that is just wrong," she said.

Kent Mutchler, superintendent of Geneva schools, said that he couldn't comment on Broviak's daughter because privacy rules prevent him from publicly discussing an individual student's situation. But he said Broviak's description of district policy is inaccurate.

"We would never demand someone's password. When you have someone's password, you open yourself up to other issues," Mutchler said. "But if we have a disruptive situation, a school (official) will ask to see the page, and if the student refuses, we call the parents." But principals only request access to students' social media pages under extreme circumstances, Mutchler said.

"There are different levels of concern. If there is a drug trafficking suspicion, we'll get the police involved. If it's something like cyberbullying, we'll say, 'This has been reported to us,' and ask to see the page," he said. Often, students volunteer before they are even asked, he said.

"We ask, 'Is there something you want to show us?' that sort of thing. And they volunteer," he said. Such incidents are very rare among district middle schools, he said, contradicting Broviak's assertion that the inspections are commonplace. "It happens a half-dozen to a dozen times per year," he said.

Broviak's public complaint came at a time when schools, employers and lawmakers around the country are wrestling with sticky privacy issues surrounding social networks. The state Legislature in Illinois is considering legislation that would make it illegal for employers to demand access to workers' or applicants' private social media information. That law is silent on the issue of schools and social media snooping, but federal legislation introduced last month by Rep. Eliot Engel (D-NY) would extend the protections to students, too.

Broviak said she didn't think school officials should ever look at a child's personal social media page or cell phone without first contacting parents. "It's just wrong for them to do this, but parents are afraid to talk about it, because they are worried, 'Are they going to target my kid?'" she said.

Additionally, she said, looking at a child's social media page violates an entire family's privacy, even if school officials don't intend to look at posts involving other family members. "The whole family is exposed in this," she said. "Some families communicate through Facebook. What if her aunt was going through a divorce or had an illness? And now there's these anonymous people reading through this information."

When the first incident occurred in the fall, Broviak said she didn't know what to do—and initially chose to let it drop for fear that complaining might make things worse for her daughter. But she said reports from her daughter that other kids have been treated the same way and a recent spate of news stories surrounding the issue pushed her to speak up. Three weeks ago she published a detailed accounting of events on her personal blog, and then agreed to be interviewed on cable television.

"It's really important for people to talk about this and know what's going on," she said. "And I'm really glad that the state legislature and Congress are considering laws to deal with this."

Her daughter, meanwhile, has learned an important but sad lesson through this experience, Broviak said. "It's taught her to use better judgment with adults," she said. "Basically, what (they) showed her was you can't trust anyone. Her trust in and the respect of the adults at her school has been shattered to the point that she is struggling to look beyond this abuse and allow for the education process to occur." Reported in: msn.com, May 18.

Bronx, New York

A 16-year-old Bronx boy was slapped with a disorderly conduct ticket inside his high school after trying to hand out flyers protesting the city's plan to shut down the school. Malik Ayala, a sophomore at Lehman High School in Schuylerville, was summoned to the dean's office in April after being ordered by school staffers to stop handing out copies of a letter he had written urging students to unite and stand up for the school.

"What will happen if all the public schools get shut down?" Ayala, who is a member of the school's Student Leadership Council, wrote in the flyers, which featured the Black Panther Party icon at the top, along with the words, "Power to the People …Then and Now."

Lehman got an F grade in its most recent Department of Education school ranking each of the past two years, and the school was placed on the chopping block in March.

Ayala said he had printed 200 copies of his letter to distribute to students on April 5, in the hopes of recruiting them for the Student Leadership Council, a youth-led group that had been organizing to save Lehman. He said a dean saw him in the hallway at 10:30 a.m. and called the school safety officer, who escorted him into the dean's office, where his parents were called.

According to the Police Department, Ayala became "loud and belligerent" while inside the office, leading school staff to call the NYPD's School Safety Division. Ayala said the officer "snatched" the letter from him, calling it "gang-affiliated."

"The purpose of the letter was to enlighten [others students] and open their eyes," said Ayala, who led a march on the 45th precinct May 7 in order to file a formal complaint against the precinct, where the school is located.

"They're turning our schools into penitentiaries," added Ayala, who said he has was issued a second ticket at a Bronx subway station April 18 while videotaping police officers conducting stop-and-frisks. The summons is a violation which carries up to fifteen days in jail if he is convicted.

An Education Department spokeswoman confirmed that Ayala was asked to stop handing out the flyers April 5, and was sent to the dean's office when he continued to do so. She added that school employees can order students not to circulate material if it is "disruptive, libelous or invades the rights of others," though she would not specify which part of Ayala's letter met those criteria.

A spokeswoman for the Police Department said the summons was issued because of Ayala's behavior, "not based on the pamphlet."

Ayala said he often cut class last year and earned mostly 50s on tests. But this year, he said, he decided to "switch it around." At the advice of a concerned teacher, he joined a community organizing group, called the People Power Movement, as well as the Student Leadership Council. Now, he said, he has lifted his test average to a 75. Ayala said his flyers were meant to share his newfound belief in the power of education — but also the need for students to demand that they receive the quality of education they deserve.

He contrasted his high school with a high-performing one his friend attends in Manhattan. "His school does not have metal detectors and is cleaner," said Ayala, while in Lehman, "I see more police than I see janitors."

On May 7, about forty supporters rallied outside of the 45th Precinct stationhouse, which is located about one mile south of Lehman, while Ayala and another teenager, who was ticketed for an unrelated incident outside the school, filed complaints inside about their treatment by the NYPD. About ten officers stood guard in front of the building, while a few local residents gathered outside of their houses to watch the commotion.

Several students from Lehman and other neighboring high schools had joined the march, they said, because they often felt disrespected by safety officers in school and police officers outside of school. "I feel like a criminal every time I walk through those metal detectors," said Xsavier Daniels, a Lehman senior who, like Ayala, is a member of the Student Leadership Council, a student-organized alternative to the official student council.

Angel Trinidad, a freshman at Bronx Academy of Health Careers, said that school safety officers and police often assume the worst about students — which is reinforced each morning, Trinidad said, when he is forced to remove his steel-toed boots before he can pass through the building's metal detectors.

"I come into school prepared to work," said Trinidad. But the layers of security and stern treatment by the guards, he added, makes students feel, "like we're garbage."

Agnes Johnson, 62, a High Bridge resident who works for a private tutoring company, said she joined the rally to protest the heavy security in the city's public schools because "my students are afraid." Johnson said that she enrolled her daughter in a charter high school in the Bronx, but pulled her out after a month because of the level of security in the school.

"I was not going to keep her in there with that massive police presence every day," said Johnson, adding that she moved her daughter to a public high school in Manhattan, where she said the security presence was less visible and students felt more comfortable. Reported in: dnainfo.com, May 9.

colleges and universities

Tucson, Arizona

The law that banned ethnic studies courses in the Tucson Unified School District may extend to universities if an Arizona policymaker can successfully push the initiative.

John Huppenthal, the state's superintendent of public instruction, told Fox News Latino that he wants to suspend Mexican American studies in Arizona universities because these courses teach students to resent Anglo-Saxons.

Huppenthal helped pass Arizona's House Bill 2281, which banned courses in public schools that promoted racial resentment, overthrow of the U.S. government or catered to specific ethnic groups. If schools that provided these courses did not comply, they would lose 10 percent, or about $14 million, of their public funding.

"The 10 percent is far more beneficial to the district as a whole than that program is for such a small, specialized group," said Zoey Kotzambasis, vice president of the University of Arizona's College Republicans and a political science freshman, a supporter of the ban.

To eliminate a program at the University of Arizona, certain procedures and steps must be followed. First, the department's dean must write a resolution to explain the reason for elimination, which must then be approved by the Faculty Senate and the Office of the Provost. Once approved, the elimination resolution is presented to the Arizona Board of Regents, which makes the final decision.

Although the bill impacted public schools in Tucson, people from around the state are advocating against it. Carlos Ovando, professor of transborder studies at Arizona State University, said he is "outraged" with Huppenthal's actions. A university should be a marketplace for diverse ideas as well as a place where ethnic history contributes to American history, he said.

"If you look at the history of the United States, it becomes part of the Mexican history and Americans should be informed of how the U.S. was shaped," he said.

While Huppenthal successfully dismantled the courses from public schools, Ovando said, he will have a much harder time doing so at universities due to student opposition.

Antonio Estrada, head of the UA's Mexican American Studies department, said banning these courses at the university level would harm academic freedom. "I believe it would be an uphill battle for Huppenthal or anyone on ABOR (Arizona Board of Regents) to recommend the elimination of MAS (Mexican American Studies), Gender and Women's Studies, Africana Studies, or any studies that focus on the history, culture and contributions to society that these disciplines provide," he said in an email.

Jennifer Contreras, a senior studying Mexican American Studies and history, said banning ethnic studies is an attack on the human race itself. Contreras said although Huppenthal has gotten this far, she does not see him "stopping any time soon."

"In my book it is plain racism," she added. "They saw a program that was very effective … and they saw that as a threat." Reported in: Daily Wildcat, May 2.

Berkeley, California

The FBI and the University of California have settled a lawsuit over their 2008 raid on a left-wing Berkeley group by agreeing to pay $100,000 and destroy computer files seized in a search for alleged threats by animal-rights advocates.

University police, federal agents and other officers entered the Long Haul Inc. office in August 2008. A judge had issued a search warrant after a university police detective said threatening messages to animal researchers at UC Berkeley two months earlier had been sent from a computer at the storefront.

Long Haul operates a bookstore, public computer terminals and meeting rooms in the building, attracting people involved in various causes on the political left.

Lawyers for Long Haul said officers broke into locked doors and cabinets in the building, seized all fourteen computers, combed through library and bookstore records, and took computer drives from both Long Haul and East Bay Prisoner Support, an unaffiliated group with offices in the building.

The police found no evidence of criminal conduct by the two groups, which then sued the officers over the search. A federal judge refused to dismiss the suit in 2009, saying the plaintiffs could try to prove that agents had misled the judge who issued the search warrant and that they were targeted because of their political views.

The university will pay three-fourths of the settlement, which is mostly for legal fees and costs. The settlement also includes an acknowledgement by University police that Long Haul publishes a newspaper, The Slingshot, a fact that officers said they hadn't known at the time. Federal law bars searches of newspaper offices unless there is evidence that a reporter was committing a crime or that the search was necessary to prevent serious injury or death.

A Long Haul representative, Jesse Palmer, said that the raid was "a fishing expedition and an attempt to intimidate and harass radicals." He said the officers refused to show the search warrant to anyone from Long Haul and "preferred to cut locks rather than accept our offer to unlock doors."

UC Berkeley issued a statement saying the university was pleased to reach an "amicable solution" but believes its police "properly obtained and executed the search on Long Haul, based on the best information officers had at that time." Reported in: San Francisco Chronicle, April 12.

Davis, California

Just months after University of California, Davis police pepper sprayed seated students in the face during a protest against university privatization and police brutality, Chancellor Linda Katehi's administration is trying to send some of the same students to prison for their alleged role in protests that led to the closure of a US Bank branch on campus.

On March 29, weeks after an anti-privatization action

against US Bank ended with the closure of the bank's campus branch, Eleven UC Davis students and one professor received orders to appear at Yolo County Superior Court. District Attorney Jeff Reisig is charging campus protesters with twenty counts each of obstructing movement in a public place, and one count of conspiracy. If convicted, the protesters could face up to eleven years each in prison, and $1 million in damages.

The charges were brought at the request of the UC Davis administration, which had recently received a termination letter from US Bank holding the university responsible for all costs, claiming they were "constructively evicted" because the university had not responded by arresting the "illegal gathering." Protesters point out that the charges against them serve to position the university favorably in a potential litigation with US Bank.

Three of the protesters had received summons from UCD Student Judicial Affairs in mid-February, and it was only after US Bank announced that it had permanently closed its doors that the UCD administration requested that the DA bring criminal charges against the twelve, deemed by supporters the "Bankers' Dozen." Supporters argue that the university is targeting the dozen in order to limit its liability to US Bank and that the university is effectively using public funds (through the DA's office) to protect a private corporation's right to profit from increasingly indebted students at an increasingly expensive public university.

Among the twelve are some of the protesters pepper sprayed by campus police during the infamous November incident. But whereas the District Attorney declined to file charges against protesters then, this less publicized prosecution seems to be an attempt to punish the dissenting students, perhaps in retaliation for their pending ACLU lawsuit against the university.

"We might not think of this as violence, because there aren't broken bones or pepper spray or guns it's not as explicit—but sending someone to jail, holding them for a day, let alone eleven years, is violence," said Andrew Higgins, a graduate student in history and representative of the UC graduate student union. Reported in: davisdozen.org.

Davis, California

At 7:02 a.m. on September 30, 2010, scant hours after an op-ed he had written for the *San Francisco Chronicle* criticizing his university appeared in print, Michael Wilkes received an e-mail from an administrator at the University of California at Davis. Wilkes, a professor at the medical school, was told that he would no longer lead a program sequence that taught better patient care, and support for a Hungarian student exchange program he headed would be withdrawn.

Within weeks, Wilkes was told that he would be removed as director of global health for the UC Davis Health System. He also received letters from the university's health system counsel suggesting that the university could potentially sue him for defamation over the op-ed.

Now, a committee on academic freedom at the university that investigated allegations of intimidation and harassment against Wilkes has found them to be true. The faculty committee said that the actions of the university administrators cast doubt on its ability to be a "truthful and accountable purveyor of knowledge and services."

The group has asked the dean and other top officials at the university's school of medicine to write letters of apology to the professor, admit to errors of judgment, stop proposed disciplinary actions against him and take steps to prevent future violations of academic freedom. The university's Academic Senate was expected to vote on similar resolutions against the administrators.

The investigation came about after Wilkes filed a written complaint to the committee in late 2010, alleging that there had been a "blatant breach of my academic freedom." The fracas started after Wilkes, an expert on prostate cancer, co-wrote the op-ed (along with a University of Southern California professor) questioning the efficacy of the prostate-specific antigen screening test, often referred to as the PSA, only days after some faculty members at the school were part of an event that promoted the test, according to documents. The other groups associated with the event were the American Urological Association Foundation and the National Football League.

The event "doesn't even acknowledge a problem with prostate cancer screening," the op-ed said. "Contrast this to the comments of Dr. Richard Ablin, the inventor of the PSA test, who has publicly called it 'a hugely expensive public health disaster,' with accuracy 'hardly better than a coin toss.' " In his op-ed, Wilkes (and his co-author) asked why the university had supported the event and wondered "whether it just might have to do with money."

"Testing for and treating PSA-identified cancer is a large part of the practice of many urologists so it may not be surprising that urology groups take a far more positive stance on the test than almost any other doctors," Wilkes said in the article.

The report from the university's Committee on Academic Freedom and Responsibility did not identify the medical school's administrators by name, only by their titles. The School of Medicine's executive associate dean, who is referenced several times in the report, is Fred Meyers; Claire Pomeroy is the school's dean.

Meyers and Pomeroy said that it would be inappropriate to comment on personnel matters and findings that are being reviewed by the university's Academic Senate. "We deeply regret that our actions in handling this particular personnel matter are perceived by some as a violation of academic freedom. Academic freedom is fundamental to the discovery and dissemination of knowledge, and we are

personally and professionally committed to upholding that freedom within our institution," they said. "We respect and protect the rights of our faculty to pursue their research and teaching as they wish, so long as it is in a manner that is consistent with professional standards."

According to the report, Meyers received several faculty complaints about the article after it appeared online and he was upset that the debate over the PSA test was playing out in the media, rather than in a scientific journals or forums. He told the committee that the timing of the actions against Wilkes were coincidental. For example, he alleged that the Hungarian student exchange program was being run poorly and Wilkes had been warned numerous times.

However, Meyers acknowledged to the committee that the e-mail sent to Wilkes "has an appearance of impropriety, based upon its close proximity to the timing of the article, even though he denies that the timing is connected," the report said.

And although none of the threatened actions against Wilkes have been carried out, committee members felt that his academic freedom had been compromised.

James Beaumont, an emeritus professor of public health at Davis who serves on the academic freedom committee, said that the university had not retracted its threat of disciplinary actions even though it hadn't pursued them.

Gregory Pasternack, a professor of hydrology at the university who also serves on the committee, said the threats against Wilkes were a very serious problem. "There is no question that he has had to adjust his behavior and it has affected his ability to teach, write commentary or interact with his students," he said.

Pasternack pointed out that when a faculty committee at the University of California at San Diego criticized a dean's decision to order a professor not to talk about and evaluate another professor's research, the university accepted the committee's findings and said that they regretted the administrator's statements.

"There have been egregious actions by the administrators at the medical school," Pasternack said. "I am hoping that the university will take a contrite approach and recognize the mistakes they have made." Reported in: insidehighered.com, June 6.

Denver, Colorado

The continuing legal battle between Ward Churchill and the University of Colorado—which fired the ethnic-studies professor for his controversial essay about the September 11, 2001, terrorist attacks—resumed June 7 when the Colorado Supreme Court heard arguments about Churchill's 2007 dismissal.

The university cited research misconduct when it fired Churchill, and the professor has been unsuccessful so far in convincing lower courts that he was wrongfully terminated. But the Colorado Supreme Court has agreed to take up three legal questions: Did the university violate the professor's rights by investigating him? Is the university's Board of Regents immune from lawsuits? And does Mr. Churchill have legal standing to sue to get his job back? Reported in: *Chronicle of Higher Education* online, June 7.

Rome, Georgia

During his fourteen years at Shorter University, Michael Wilson, a librarian, built a library collection for the college's satellite campus in Atlanta. He shaped his post as the first full-time librarian for adult and professional students. Then he won tenure, and planned to stay at the Baptist college in Rome until retirement.

Instead, in May he effectively handed in his resignation.

In October, the college announced it would require all employees to sign a "lifestyle statement" rejecting homosexuality, adultery, premarital sex, drug use and drinking in public near the college's campus. It also requires faculty to be active members of a local church. The statement, one of several steps the university has taken to intensify its Christian identity after the Georgia Baptist Convention began asserting more control over the campus six years ago, provoked an uproar among faculty, alumni and observers.

Before the new contracts were circulated, more than fifty members of the faculty and staff who felt they could not abide by its rules, or did not feel they should have to, resigned. Wilson stayed. But when he was offered his contract for the academic year, he signed and returned it, but with one line crossed out: "I reject as acceptable all sexual activity not in agreement with the Bible, including, but not limited to, premarital sex, adultery, and homosexuality."

So far, the college has not responded. In refusing to sign the lifestyle statement in its entirety, writing a letter to the college's president explaining his decision, and speaking out about his decision on the front page of the local newspaper, Wilson, 50, has become a somewhat reluctant and bewildered spokesman for the faculty and staff members who disagree with the university's new direction.

Wilson came to Shorter as a librarian in 1998, after working in public library systems and part-time in academic settings. It was his first full-time professional job, he said, and he was the college's first full-time librarian for its growing population of adult and professional students on a satellite campus in Atlanta.

He was never asked about his sexuality in his job interview, or in any official capacity, he said. But he didn't conceal it, either, and he had no qualms about working for a Baptist university; nobody seemed to care. By the time he was awarded tenure six years ago, many of his colleagues probably knew he was gay, he said.

"It was really a very nice place to work," he said. "I could come in, I could do my job, and that's what they valued."

But around the same time Shorter offered tenure to Wilson, it also lost a court battle with the Georgia Baptist Convention over who would control its direction. The state convention began asserting more control over the college in 2001, selecting trustees on its own rather than from a list the college traditionally provided, and in response Shorter's board voted to cut ties with the convention. The Baptist group sued, arguing that Shorter did not have the authority to unilaterally become independent, and successfully stopped the college from breaking off. The legal fight went all the way to the state supreme court, which ruled in the Baptist convention's favor in 2005.

Since then, the Baptist convention has selected the college's trustees. The college became more strict almost immediately: in 2008, Shorter joined the Council for Christian Colleges and Universities, a group of evangelical colleges who hire mostly only evangelical Protestants as full-time faculty members. The climate at Shorter began to change around that time, Wilson said, adding that he would like the college to hire based on qualifications and not on religious beliefs.

The first president chosen by the new board took office last year, and the lifestyle statements were introduced in October. Wilson said he knew right away he could not sign: "It's a matter of conscience," he said.

Since the statements were first proposed, controversy has raged. An anonymous survey in April found only 12 percent of faculty and staff plan to stay. Save Our Shorter, a group opposing the changes, has a list on its website of more than fifty faculty members who are leaving as a result of the new policies. Several departments, including science and the fine arts, have been "eviscerated," Wilson said.

Few, if any, have spoken out as publicly on their decisions to leave, as Wilson did. Most simply resigned, he said.

In a statement, Donald Dowless, Shorter's president, said he could not comment on Wilson or any other individual faculty members' employment situations. "I can tell you that I and the board of Shorter University understand that some members of our faculty and staff disagree with the university's personal lifestyle statement and therefore have chosen to resign," he said. "While we hate to lose members of our community, we wish them well."

For his part, Wilson is aware that his situation is less than ideal: a middle-aged academic facing a tough job market. He's applied for several jobs at libraries at colleges and elsewhere. Leaving Shorter after fourteen years is "wrenching," he said.

"I'm a pretty quiet person," he said. "But I perceive this as a great injustice." Reported in: insidehighered.com, May 14.

San Antonio, Texas

In the fall, Sissy Bradford took a public stand—unpopular with many in San Antonio—about separation of church and state. She was briefly in the news and her view prevailed. Since then, she has received e-mail threats because of her stance. This month, she told the story of those threats to the alt-weekly in San Antonio, which ran an article about them. And the day the article came out, Texas A&M University at San Antonio told her that she would not be teaching in the fall, despite her having previously been assigned four courses.

Bradford teaches criminology at the university, she has strong student evaluations, and she has been honored for her teaching. She became a public figure when she complained about crosses that had been installed on a tower that was part of the entrance to the campus. The crosses were put there by a developer, not the university, but Bradford maintained that they were inappropriate for the entrance to a public university campus. Americans United for Separation of Church and State backed her—and after that organization sent a series of letters to San Antonio and university officials, the developer removed the crosses. That was in November.

As the debate played out over church-state issues, Bradford started to receive threatening e-mails. One of the e-mails reflects the tone. It started with: "As a professor, do you have the right to live?" And it described Bradford ending up in a coffin, concluding "After that you will reign with your father Satan." That e-mail message and a series of others were turned over to the university police department, Bradford said.

Bradford believes that the university did not take the threats seriously. She shared her frustrations with *The Current*, a San Antonio publication, which ran an article in which she discussed the threats, as did some students who backed her. The university police department confirmed for The Current that an investigation into the threats had been opened, and closed, and declined to discuss details.

The day the article appeared, Bradford received an e-mail from William S. Bush, interim head of the School of Arts and Sciences at Texas A&M-San Antonio, that said in its entirety: "I'm writing to inform you that the School of Arts and Sciences will not be able to offer you any classes in the fall semester. If you wish to discuss this matter further, please submit a written request to Dr. Brent Snow, provost and VP for academic affairs. Please note that he will be traveling abroad until Tuesday, May 29."

Adjuncts are fully aware that they lack job security. But Bradford noted that she had previously been assigned four courses for the fall and she provided *Inside Higher Ed* with e-mails from administrators about the course assignments, and other e-mails from the university confirming that she had turned in book assignments for the classes. Further, she noted that the university has been regularly advertising for adjuncts to teach criminology—the subject area she teaches.

"It is quite obvious I wasn't fired for any reason related to my ability to teach," Bradford said.

A spokeswoman for Texas A&M-San Antonio said that Bush was not aware of the article in *The Current* when he decided who would receive classes for the fall, and that Bradford was among twenty adjuncts who were not offered employment for the fall. The spokeswoman did not indicate why Bradford would have received class assignments and then have them removed. But she said that "adjunct faculty members are all appointed on a semester-by-semester basis as needed by the university. This is a common practice. There is no expectation of continued employment."

Eric Lane, president of the San Antonio chapter of Americans United for Separation of Church and State, said that the university had an obligation to protect Bradford from those threatening her, and to show that it protects those who take public positions. "If on a university campus you cannot have discussion and debate over an issue like this where there are varying sides, it creates a threatening environment," he said.

Bradford said that the lost courses will have a huge impact on her life. "That was my livelihood and my health insurance," she said. She said she is particularly bothered that this outcome resulted from a dispute that started with her voicing concern about an American principle. "The state of academic freedom is in peril if you can't speak up for the Constitution," she said.

The American Association of University Professors and the Foundation for Individual Rights in Education both expressed concerns about Bradford's treatment.

A letter from the AAUP to President Maria Hernandez Ferrier said that "we believe that the action taken against Ms. Bradford was effectively a dismissal for cause, without the administration's having demonstrated adequacy of cause before a faculty hearing body. It thus seems to us to be a summary dismissal, fundamentally at odds with academic due process." The letter continues: "We accordingly urge that the Texas A&M University-San Antonio administration rescind her dismissal and reinstate her to the teaching that had been assigned to her for the fall semester, with any further action in her case to be consistent with the enclosed principles and standards."

The Foundation for Individual Rights in Education (FIRE) announced that it was looking into the case. A statement from the organization said in part: "Many know, of course, that the job security of adjunct instructors like Bradford is nowhere near what it is for tenured professors and that universities may (and frequently do) decide not to rehire them for myriad reasons—or no reason at all. But this does not mean that adjunct professors possess fewer First Amendment rights than their tenured counterparts. Adverse employment action taken against adjunct instructors on the basis of their protected expression as citizens violates the First Amendment." Reported in: insidehighered.com, May 29, June 1.

social media

Menlo Park, California

Seeking to address concerns about the personal information it collects on its users, Facebook said April 12 that it would provide any user with more information about the data it tracks and stores. In a posting on its privacy blog, Facebook said the expanded archive feature would be introduced gradually to its 845 million monthly active users. It goes beyond the first archive made available in 2010, which has been criticized as incomplete by privacy advocates and regulators in Europe.

The archive Facebook published two years ago gave users a copy of their photos, posts, messages, list of friends and chat conversations. The new version, Facebook said, includes previous user names, friend requests and the Internet protocol addresses of the computers that users have logged in from. More categories of information will be made available in the future, Facebook said.

Online social networks offer free services to users and make money primarily through advertising, which can often be directed more effectively using the information the network has collected on them.

Facebook, which was preparing for an initial public stock offering, has been trying to accommodate government officials in Europe, where privacy laws are more stringent than in the United States. Facebook's data collection practices have tested the boundaries of Europe's privacy laws. The social networking site, based in Menlo Park, is Europe's leading online network.

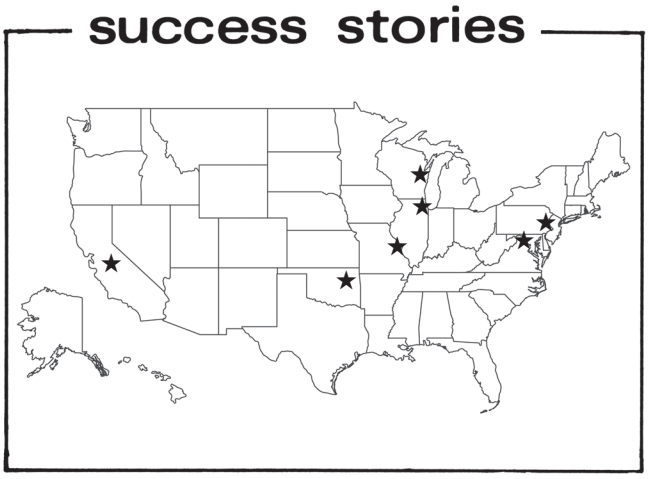
In December, the Irish Data Protection Commission reached an agreement with Facebook, which runs its international businesses from offices in Dublin, to provide more information to its users and amend its data protection practices. "We took up their recommendation to make more data available to Facebook users through this expanded functionality," the company said in a statement.

Facebook agreed to make those changes by July. In Europe, 40,000 Facebook users have already requested a full copy of the data that the site has compiled on each of them, straining the company's ability to respond. Under European privacy law, the company must comply with the requests within forty days.

Max Schrems, the German law student who filed the complaint leading to the agreement with the Irish authorities, criticized Facebook's latest offer as insufficient. "We welcome that Facebook users are now getting more access to their data, but Facebook is still not in line with the European Data Protection Law," said Schrems, a student at the University of Vienna. "With the changes, Facebook will only offer access to 39 data categories, while it is holding at least 84 such data categories about every user."

(continued on page 186)

success stories



libraries

Broken Arrow, Oklahoma

A highly popular teen novel about a boy entering his freshman year in high school will remain on middle school library shelves, the Broken Arrow Board of Education ruled May 10. The board voted 3-0 to keep *Carter Finally Gets It* in middle school libraries. Each of the board members read the book. Two board members were not in attendance.

Theresa Sallee, parent of an eighth-grade son who attends Childers Middle School, asked the board to remove the novel, saying it is "vulgar, vulgar, vulgar."

"I don't do this lightly. I hate rocking the boat," she said, adding that she could not in good conscience let the book go unchallenged. She pointed out passages of the book that referred to a variety of subjects ranging from masturbation to the bullying of students with special needs. The main character, Carter, stays home from school and watches pornography all day. He also refers to girls as items on a menu and talks of selecting girls "like a lion selects its prey," she said.

"His main goal is to get a girl to have sex with him. And that's the clean version," Sallee said. "One girl is called a village bike because every boy in Marion has had a ride on her."

Sallee, who said her son is not a big reader, brought the book home and that when she examined it, "I almost fell over. This is not worth the paper it's written on. When we call people gay and a retard and the sexualization of girls, it's just not right."

Assistant Superintendent Amy Fichtner outlined for the board the procedures and criteria they must consider before removing a book from the library, including books that are not required reading. A school-level and district-wide committee had already ruled that the book should be retained, but the board of education had the final say.

"While the (school) committee does not support or promote the use of questionable language or all of the decisions made by the characters in the book, the committee did not find the book to be pervasively vulgar or completely lacking in suitability," Fichtner said. The district strives to select library books to provide a wide variety of diversity and appeal and different points of view, she added.

"It's not the assumption on the part of the principal or librarian that every book meets the needs of every child," Fichtner said. "The parent is the ultimate authority for their own child. Parent choice and guidance are the No. 1 way to filter or choose among those materials."

She recommended that the board retain the book, noting that "the courts have found most — and I won't say all — most removals of materials from media centers have been found to be contrary to the law and specifically a violation of the First Amendment."

"So, in other words, if your intent was to discriminate based on race, religion, politics, matters of opinion, then that would be an inappropriate use of your authority as a school board member," Fichtner said. "Motivation is the key to your removal. If your intent is to deny students access to ideas with which the board disagrees and that becomes a decisive factor, then the removal is a violation of the Constitution of the United States of America."

She added that "every parent has a choice what their children will read, and the school will partner with them … to the best of our ability."

After the meeting, Sallee said she understood the board's decision. "I did this because of my personal beliefs, and I felt I was standing up for what I think is right. If I didn't do it, it would always haunt me forever," she said.

Superintendent Jarod Mendenhall called banning books from libraries a "slippery slope."

"The First Amendment is there for a reason," he said. "We live in a democracy. They don't have to check the book out. It is a parental choice if they want to or not.

"I can understand where a parent would say, 'You know, I don't want my kid reading that.' You know what? They shouldn't let their kid read that. And that is totally OK. I applaud Mrs. Sallee," Mendenhall said.

"Bottom line, this is their community and their kids. They have the right to stand up for what they believe in, because we're in a democracy."

Carter Finally Gets It was recognized by the Young Adult Library Services Association as one of 2010's Amazing Audiobooks. Reported in Tulsa World, May 10.

schools

Easton, Pennsylvania

Nickel and Dimed, by Barbara Ehrenreich, can stay at Easton Area High School, the school board said May 23. By a 4-2 vote, the board overruled complaints from residents

who say—for a variety of reasons—that the book is inappropriate classroom material.

In *Nickel and Dimed*, Ehrenreich spent a year working low-wage jobs to explore how America's poorer residents live. Opponents of the book—in Easton and around the country—object to it because they say Ehrenreich uses it to push her political agenda, because she makes what they call anti-Christian statements, and because it contains a passage on how to fake your way through a drug test.

Eric Adams is a Lower Saucon resident who has lobbied to have the book removed from Easton Area High School, where it's part of an advanced placement English course. "It promotes a political agenda in a publicly funded classroom," Adams said. He was joined by his mother, Sandra, who argued that the book is actually beneath high schoolers.

"It's funny. It's easy to read. It has the 'F' word. But that's called entertainment," she said.

The book had its supporters, too, like Bernie Varela, who was part of the original committee that approved the book. She noted that her daughter is reading it in a college journalism course, and argued that *Nickel and Dimed* is important not because of its content, but because of what it teaches students about rhetorical devices. And if it does contain biased material, "Shouldn't we be exposing our best and brightest to controversial issues?" Varela asked.

In the end, the board agreed to keep the book—which isn't a mandatory selection—on the shelves, ending an issue that's been debated since 2010.

As he had a few weeks earlier, board member Robert Moskaitis suggested that's far too long for the matter to be up in the air. At the end of the meeting, he noted that the next committee meeting will take up new science curriculum. "That's a lot more important than *Nickel and Dimed*," he said. Reported in: Easton Patch, May 23.

Appleton, Wisconsin

Rejecting a campaign by a group of parents unhappy with the choice of books for a high school class, the Appleton Area School District will not offer the option of an alternative ninth-grade Communication Arts course.

Appleton's Board of Education voted against a request to provide an alternative curriculum for Communication Arts 1010 made by members of Valley School Watch, a parent group formed after an Appleton parent challenged the use of *The Body of Christopher Creed* in 2010 because of its references to suicide and sex.

"The educational material selection policy states that the parent has the right to judge whether certain materials are acceptable for his or her child," board member Diane Barkmeier said in a presentation. "However, no individual or organization has the right to limit the students' access to materials that are part of the district's educational program."

Nan Bunnow, AASD humanities director, said it was the district's responsibility to make sure books used in the classroom reflect the "pluralistic society" students live in, and "foster respect for all groups of people." The district considered input from 33 people who submitted their thoughts while the books were on display at the Appleton Public Library and the school districts headquarters.

Five books remaining in the curriculum are considered inappropriate by Valley School Watch, including *The Catcher in the Rye*, *The House on Mango Street* and *The Body of Christopher Creed*.

Valley School Watch requested that an alternate communication arts course be offered to ninth graders in 2011. The reading list for the group's ideal alternate class would contain books with no profanity, obscenity or sexual material.

John Krueger, who heads Valley School Watch, said the district's recommendations for the Communication Arts curriculum were made behind closed doors without the proper amount of community input. He also said board members should have provided guidelines in advance for the subcommittee that chose curriculum materials.

"VSW believes the recommendation to the board is illegitimate and we intend to hold school board members accountable for their lack of oversight," Krueger said in a statement.

None of the books in the Communication Arts course are required reading. Instead, they are among several options. Many books do not contain objectionable material, Bunnow said. Parents still will be able to opt their student out of reading a book they consider inappropriate. For students who exercise the opt-out option, the teacher is required to come up with an alternate assignment.

Sharon Fenlon, board president, said she had seen a Skype session with the author of *The Body of Christopher Creed*, Carol Plum-Ucci, who explained the subject matter of her book. "She said her goal is to write about students and young people as they are, not as we wish they were," Fenlon said. Reported in: Appleton Post-Crescent, April 24.

colleges and universities

Fresno, California

California State University, Fresno, public health professor Peggy Gish had to defend her curriculum when one of her students complained in April that she showed a 20-minute pornographic film in class. Called "*Advanced Sexual Techniques, Volume One*" the video contained both sexually explicit audio and graphic video. The complaint came as a surprise to administrators considering Gish's course was about human sexuality.

Andrew Hoff, dean of Fresno State's College of Health and Human Services, defended Gish and explained the 20-minute video segment was an element of a three-unit, semester-long Introduction to Human Sexuality general education course. The class explores "physiological, psychological,

social, cultural and developmental considerations for lifelong understanding related to sexuality," he said.

"It is not a required course. Students who take the course are advised, in advance, that they may find some content objectionable and that they may opt out at their discretion," said Hoff in the statement. "Since material is provided in a variety of formats, students have the opportunity to gain course content for assignments and exams without being required to view material they may find objectionable."

An online synopsis of the video advertises, "Attractive real life couples explicitly demonstrate adventurous new techniques. Discover uninhibited positions that lead to pleasure, satisfaction, and closeness for a lifetime."

However, Hoff says the video wasn't pornography. It's produced by the Sinclair Institute, a company that provides "sexual health products" to adults who want to improve their sex lives. The institute's LinkedIn profile says, "Sinclair videos aid in adult sex education and help individuals learn about sexuality in the privacy of their home. Working with a diverse team of professional sex educators and therapists, we create products that work by fostering communication and creativity between partners."

Hoff said, "The goal is providing relevant information so all students, no matter their learning style, are prepared to offer informed opinion and make critical determinations regarding issues raised in class."

University-level courses typically utilize a range of materials to deliver course content, he added.

The school isn't planning disciplinary action and considers the matter closed. Reported in: huffingtonpost.com, April 14.

Washington, D.C.

Kathleen Sebelius, the U.S. Secretary of Health and Human Services, gave a talk May 18 to graduates of Georgetown University's Public Policy Institute, despite opposition from some Roman Catholic groups. Critics said that Sebelius's involvement in the Obama administration's health care policies—including requirements that employees have access to birth control coverage, contrary to Roman Catholic teachings—made her an inappropriate speaker at a Catholic institution. During her appearance, one audience member stood up and shouted "You're a murderer" at Sebelius, but she continued to speak and received an "enthusiastic" response from the graduates. In her talk, Sebelius said that a "process of conversation and compromise" is required when dealing with religious issues and public policy. Reported in: insidehighered.com, May 21.

Chicago, Illinois

Chicago State University has quickly reversed a decision to ban its faculty and staff from speaking with the media—a policy which could have led to termination if violated.

The *Chicago Tribune* reported April 6 that the university instructed its faculty and staff that any form of media community—including via social media—must be approved by the school's public relations division. The school, in response to the *Tribune's* inquiry, said the policy was currently under review.

Later that day, however, university officials told the paper the policy "had not received proper review and approval through legal counsel prior to being distributed" and was being withdrawn.

Cary Nelson, president of the American Association of University Professors, called the policy "an obscenity and absurdity and is not tolerable."

The publicly funded South Side campus has been no stranger to controversy in recent years. The Better Government Association reported in March that, in 2009, Chicago State University President Wayne Watson banked as much as $800,000 in compensation when he left the position of City Colleges Chancellor. Watson is also reportedly collecting a $140,000 annual pension from City Colleges in addition to his $250,000 salary, plus perks, at Chicago State.

The school has also come under fire, and risked losing its accreditation, due to allegedly allowing failing students to continue to enroll in order to help boost its troubling enrollment and retention rates. Reported in: huffingtonpost.com, April 7.

St. Louis, Missouri

The Cougars for Cannabis Club at St. Charles Community College (SCC) near Saint Louis was recently involved in a successful fight against its student government to obtain official recognition. Like many similar clubs across the country, Cougars for Cannabis tries to engage people in dialogue about marijuana policies and to advocate for decriminalization and regulation of the drug.

This spring, club organizer Duell Lauderdale asked the SCC Student Senate to grant official recognition to Cougars for Cannabis. After three meetings, the Student Senate voted against approving the club. This action violated the club's First Amendment rights, since the Student Senate's authority to recognize groups was granted by SCC, a public college. Cougars for Cannabis appealed the decision to the administration, and ultimately the club was approved.

Dean of Student Development Yvette Sweeny explained why: "Their ability to discuss and to investigate whether our federal policies are still practical and reasonable, that's just like any other law they'd be talking about whether it's our civil rights laws or our constitutional process, this fits right in with free speech."

But some students don't seem to understand this fundamental principle. Student Senate President Victoria Smith expressed concern that supporting the rights of a club such as Cougars for Cannabis somehow meant supporting illegal

activity. She asked, "Why would you want to support something that's illegal? Where does it stop?"

Such an objection displays a common problem with student government votes on club recognition: too many students seem to believe that giving a club recognized status means that you agree with it. That's obviously not true; after all, most colleges have officially recognized College Democrat and College Republican clubs, and the student government couldn't simultaneously agree with everything in both groups' missions.

United States Supreme Court decisions in *Rosenberger v. Rectors of the University of Virginia* (1995) and *Board of Regents of the University of Wisconsin v. Southworth* (2000) developed the idea that funding for student groups should adhere to the principle of "viewpoint neutrality," meaning that schools "may not discriminate based on the message advocated." If unpopular viewpoints and debate are suppressed on campus, our nation's future leaders will remain unexposed to the ideological diversity that characterizes our democracy.

Further, advocating for something that is currently illegal to be legalized is a perfectly legitimate enterprise. The campaigns for women's right to vote, for the revocation of Prohibition, and the right of 18-year-olds to vote are some obvious examples. In a free society, you have every right to advocate for changes in the law.

There may be some changes in the near future for SCC Student Senate Constitution, however. Outgoing Student Senate President Jared Streiler appointed a three-person group to decide whether or not the Student Senate's constitution should be revised. If the Student Senate revises its constitution to force the Cougars for Cannabis out of existence, it likely will have another First Amendment violation on its hands. Yet, if the new constitution no longer lets the student government make viewpoint-based decisions when approving and funding student groups, this will be a welcome and necessary improvement. Reported in: thefire.org, May 15.

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censorship dateline…from page 164)

fighter—never giving an inch to Israel, which has illegally occupied her homeland," says the editorial. "But there's also a bigger issue — one whereby academics the world over need to ensure that Israel is isolated for its immoral and illegal actions in occupying Palestine and repressing the Palestinian people. The pen is mightier than the sword."

Habayeb said she was thrilled that her efforts had killed the anthology. "I am so proud of having the book canceled," she said. "I am a Palestinian and to achieve this, to be able to resist the illegal Israeli occupation of my homeland is something that I will cherish forever. It is my own victory in the struggle." Reported in: insidehighered.com, May 31.

beer

Birmingham, Alabama

You can buy Fat Bastard wine in Alabama, but you'll have to go elsewhere for Dirty Bastard beer.

The state alcoholic beverage control agency said April 19 it has banned the sale of Dirty Bastard beer in the state because of the profanity on its label.

Beer and wine are commonly sold in grocery and convenience stores and anyone can see the labels, so staff members rejected the brand because parents may not want young people to see rough language on the shelves, said Bob Martin, an attorney with the Alabama Alcoholic Beverage Control Board.

"That's the whole reason for the rule, to keep dirty pictures and dirty words away from children," he said. "Personally, I believe the staff made the right call."

Workers at the agency consulted sources including the Federal Communications Commission and Wikipedia to develop a list of objectionable words that should not appear on product labels, Martin said, and the list includes "bastard."

The state allows the sale of Fat Bastard wine and also approved the sale of another brand of beer called Raging Bitch, Martin said, but both of those decisions were made years ago. "I have no idea how or why or exactly when that went through," he said.

He said the agency considered revoking those earlier approvals when it denied the application for Dirty Bastard, but officials decided against such action. The maker of Dirty Bastard, Grand Rapids-based Founders Brewing Co., can appeal the decision to the agency's board.

Alabama gained notice a few years ago for banning a wine brand that featured a nude nymph on its label. Its decision on the beer is opposed by Free The Hops, a group that advocates for new beer brands in Alabama.

More than one-third of Alabama's 67 counties still prohibit the sale of alcohol, and all but two counties in north Alabama are dry. Reported in: *Detroit Free Press*, April 20.

foreign

Shanghai, China

Maybe it was just a coincidence, but when the Shanghai Stock Exchange fell 64.89 points June 4 — uncannily echoing the date of the Tiananmen Square crackdown on pro-democracy students on June 4, 1989, exactly 23 years earlier — the Chinese blogosphere went into a tizzy.

"I want to thank all the stock traders!" wrote one microblogger.

"Maybe God does exist?" wrote another.

Whatever the reason, the strange trick that the stock market played on the Chinese Communist Party sent the country's censors scrambling as well, prompting them to undertake unusually strenuous efforts to block references to the tragedy, which Chinese leaders have tried desperately to erase from their country's consciousness.

In a nation where numerology is taken very seriously, the censors quickly began blocking searches for "stock market," "Shanghai stock," "Shanghai stock market," "index" and related terms. They also deleted large numbers of microblog postings about the numerical surprise.

And even before tens of thousands of demonstrators clad mostly in black gathered at Victoria Park in Hong Kong for an annual candlelight vigil commemorating the Tiananmen killings, censors were also blocking searches for "Victoria Park," "black clothes," "silent tribute" and even "today."

Not only did the broad index of the Shanghai exchange fall 64.89 points but the index also opened that morning at 2346.98, a figure that, to some, looked like the date of the crackdown written backward, followed by the 23rd anniversary.

The Shanghai Stock Exchange Composite Index is calculated by adding up the market capitalizations of hundreds of stocks and then converting the sum into an index based on a value of 100 on December 19, 1990. Richard W. Kershaw, the managing director for Asia forensic technology at FTI Consulting, a global financial investigations company, said that it would be almost impossible for anyone to coordinate the buying and selling of so many stocks to produce a specific result.

But hackers have targeted the computer systems at other stock exchanges in the past, and Kershaw said it was at least possible that this might have occurred in China. He predicted that the government would investigate, adding, "You can bet we'll never hear the results."

Chinese culture puts a very strong, sometimes superstitious, emphasis on numbers and dates. The Beijing Olympics started at 8:08 p.m. on Aug. 8, 2008, a time and date chosen for the many eights, considered an auspicious number.

Even 23 years later, the use of tanks and gunfire to disperse unarmed students and other Tiananmen Square protesters remains a point of bitter dispute in China and around the world.

Increased attendance at the Hong Kong vigils has coincided with public concern there and in mainland China about issues including corruption and the inequity of wealth. And retired Chinese officials who were in office in the months leading up to the Tiananmen Square crackdown have begun publishing their memoirs.

The memoir of Zhao Ziyang, the general secretary of the Chinese Communist Party in the two years before the protest, was published shortly before the 2009 vigil. He was ousted from power immediately after the Tiananmen crackdown by Deng Xiaoping, China's supreme leader at the time.

A series of conversations with Chen Xitong, the mayor of Beijing in 1989 and a reputed hard-liner, were published in May. He expressed regret that a military assault had taken place, denied reports that he had played a role in organizing the attack and said that "several hundred people died that day."

Estimates of the civilian death toll in the crackdown have ranged from the hundreds to thousands.

China tightens security measures for the anniversary each year. This year the government detained or placed under house arrest an unknown number of dissidents, part of an annual procedure before the anniversary. The local government of Tongzhou, an eastern district of Beijing, took the unusual step of publishing on its Web site a description of its precautions for the anniversary: "From May 31 to June 4, wartime systems and protective measures should be in effect, and security volunteers, wearing red armbands and organized by the collective action of neighborhoods, should be on duty and patrolling."

The post was soon deleted. Reported in: *New York Times*, June 4.

Tehran, Iran

Iranian Supreme Leader Ayatollah Ali Khamenei's own words have now become a victim of Iran's massive online censorship infrastructure.

According to Radio Free Europe (RFE), Khamenei issued a "fatwa," or religious edict, confirming that antifiltering tools and software are illegal in Iran. The decree came in response to a question by a semi-official news agency, which had asked for clarification on the ruling due to the fact that, as journalists, employees sometimes need to access blocked websites and other non-authorized information.

Khamenei replied: "In general, the use of antifiltering software is subject to the laws and regulations of the Islamic republic, and it is not permissible to violate the law."

However, his own use of the word "antifiltering" apparently triggered Iran's own filtering system, making Khamenei's words inaccessible to most Iranians. Reported in: arstechnica.com, May 9.

Kuala Lumpur, Malaysia

ZI Publications will file a series of judicial reviews over the arrest of its owner Ezra Zaid and the ban and seizure of a book written by a lesbian author who professes to be a Muslim.

The Selangor Islamic Religious Affairs Department (Jais) on May 29 raided the publisher, which has courted

controversy by publishing Canadian author Irshad Manji's book *Allah, Liberty and Love* in Malay, seizing 180 books, according to ZI.

ZI said this was the second such seizure by religious authorities after the Federal Territory Islamic Religious Department (Jawi) also seized the books, which were banned by the Home Ministry, the previous week.

"These concerted actions first by Jawi, and now Jais, indicate that certain religious bureaucrats do not respect that any deprivation of liberty must only be made in accordance with the law — both in terms of the letter of the Constitution as well as its spirit. Sadly, this was utterly absent yesterday. It exposes the fact that there are Napoleons within these departments who believe they can act in a lawless fashion," said Ezra, who was brought before the Syariah Court in Shah Alam.

According to ZI, Ezra posted bail of RM1,800 and the judge also ordered that the son of former Cabinet minister Datuk Zaid Ibrahim be charged within 60 days with a mention date fixed for July 18.

"Irrespective of how the discretion to proffer a charge is exercised by the relevant authorities, Ezra Zaid will now file a suit for judicial review against his arrest and a legal challenge to the validity of the section under which he is being investigated. This will subsequently be followed by a judicial review against the seizure of books by Jawi last week, as well as a judicial review on the book ban by the Home Ministry," ZI said.

According to the warrant issued by the Shah Alam Syariah Lower Court yesterday, the raid was conducted under Section 16(1)(a) or (b) of the Religious Publications Offences against Islamic Law.

The Home Ministry banned Manji's book, citing teachings that contravene the Quran and Hadith, several days after the book hit shelves nationwide. However, even before the ban was imposed, Jawi had confiscated copies of the book from a literary chain store in Bangsar.

Manji, who openly supports lesbian, gay and bisexual and transsexual lifestyles in Islam, was in Malaysia on May 19 to launch the book and went ahead with a single public forum despite the government banning any promotional events.

In 2009, Malaysia also banned her book, The Trouble with Islam Today. Reported in: *Malaysian Insider*, May 30.

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from the bench …from page 170)

case that warrantless GPS tracking was legal.

If followed by other courts in these circuits, this means that law enforcement agents and prosecutors in nineteen states, as well as Guam and the Mariana Islands, can use the so-called "good faith exception" to support warrantless GPS surveillance in pending cases where data was gathered prior to the Supreme Court ruling, while those in other states cannot.

"If we're going to apply the law one way in half the country and another way in the other half of the country, that's a real problem," Fakhoury says.

Amaya's defense attorney expressed surprise at the decision in that case. "I'm not sure where this is coming from to be honest with you," said R. Scott Rhinehart, noting that the Supreme Court case did not raise the issue of a "good faith" exception to the use of GPS tracking.

The case involves GPS devices that were used by DEA agents to repeatedly monitor the movements of Amaya over several months, beginning in March last year. Amaya was indicted last July on charges that he possessed, and conspired with others to distribute, large amounts of methamphetamine, cocaine and marijuana. During their investigation, DEA agents secretly placed GPS trackers on nine vehicles belonging to various suspects, including three driven by Amaya.

Law enforcement's use of GPS vehicle trackers came under increased scrutiny last year when the U.S. Supreme Court took up the case of *United States v. Jones*, which also involved the use of GPS trackers in a drug investigation.

Antoine Jones was given a life sentence by a lower court for drug trafficking, based in part on evidence gathered with a GPS vehicle tacker placed on his Jeep. A federal appeals court in Washington, D.C., later ruled that collecting data from the GPS device amounted to a search, and therefore required a warrant. Prosecutors argued that the device only collected the same information that anyone on a public street could glean from physically following the suspect. But the appellate court judge wrote in his ruling that the persistent, nonstop surveillance afforded by a GPS tracker was much different from physically tracking a suspect on a single trip.

The Obama administration called the appellate decision "vague and unworkable," and petitioned the Supreme Court to rule that authorities did not need to obtain a warrant to use the devices. The Supreme Court justices ruled earlier this year in January that GPS tracking of a suspect's vehicle qualified as a search under the U.S. Constitution, but stopped short of ruling that authorities needed to obtain a warrant every time they used a tracker.

The justices said that law enforcement authorities might need a probable-cause warrant from a judge, but did not say definitively whether such a search was unreasonable and required a warrant. Most legal experts, however, say the implication is that the use of such devices would require a warrant.

The ruling reportedly prompted the Federal Bureau of Investigation to disable some 3,000 trackers that were in use in the field at the time the ruling came out, and to begin drafting new guidelines for using the devices.

The *Jones* case left open the question of whether a warrant is required for GPS monitoring or if, instead, warrantless GPS monitoring is lawful when officers have

reasonable suspicion or probable cause to believe that a vehicle is involved in illegal activity.

In the Amaya case, Judge Bennett sidestepped that issue entirely and did not even consider whether the DEA agents had reasonable suspicion or probable cause to use the devices to track Amaya. Instead he made his ruling based solely on the "good faith" exception from a 2011 Supreme Court case, *Davis v. United States*.

The *Davis* ruling allows a good-faith exception for searches that reasonably relied on binding precedents that were later found to be faulty.

Judges in two other GPS cases in California and Hawaii, both in the Ninth Circuit where a precedent ruling exists, asserted the same "good faith" exception. Fakhoury says the problem isn't with the way judges are applying the Davis ruling, but in the Davis ruling itself.

"Davis is a really poorly-reasoned, not well-thought-out opinion," he says. He expects the same thing will happen in other kinds of cases where various Circuit courts around the country have split on a ruling, and the Supreme Court makes a final ruling that ultimately won't apply in states where a precedent ruling existed.

"This situation is just going to keep popping up again and again," he said. "And the whole point of a Supreme Court ruling is to clarify the law and make it uniform across the country." Reported in: wired.com, April 20.

police

Springfield, Illinois

The United States Court of Appeals for the Seventh Circuit has ruled that the First Amendment protects the right of private citizens to record the actions of police while they are performing their duties in public places. The decision resulted from a lawsuit by the American Civil Liberties Union of Illinois against the state's unusually broad eavesdropping statute. It criminalizes all audio recordings made without the consent of the parties involved, even of public officials in public places.

"The act of making an audio or audiovisual recording is necessarily included within the First Amendment's guarantee of speech and press rights as a corollary of the right to disseminate the resulting recording," wrote the two-judge majority in a May 8 decision. The Illinois statute "interferes with the gathering and dissemination of information about government officials performing their duties in public. Any way you look at it, the eavesdropping statute burdens speech and press rights and is subject to heightened First Amendment scrutiny."

But Judge Richard Posner disagreed with his colleagues. Posner is the judge who raised concerns in oral arguments that striking down the statute would lead to more "snooping around by reporters and bloggers."

The majority's ruling "casts a shadow over electronic privacy statutes of other states," Posner wrote in his dissent. He worried that crime victims would be hesistant to report crimes to police officers in public out of fear that the conversation might be recorded by a third party's cell phone and posted to the Internet.

But Posner's colleagues disagreed. "The Illinois statute is a national outlier," they wrote. Most states only regulate recordings of private conversations, not those that occur in public places in earshot of passersby. Moreover, they wrote, "the Illinois eavesdropping statute obliterates the distinction between private and nonprivate by criminalizing all nonconsensual audio recording regardless of whether the communication is private in any sense." The majority argued that this made it very different from laws elsewhere in the country.

The Seventh Circuit is at least the second appeals court to endorse a First Amendment right to record the actions of public figures in public places. Last year, the United States Court of Appeals for the First Circuit sided with a Boston man who argued his First Amendment rights were violated when he was arrested for recording an arrest that occurred on Boston Common. Reported in: arstechnica.com, May 9.

prisons

Austin, Texas

Texas corrections facilities did not violate the First Amendment by banning certain books that graphically describe rape, child abuse and race relations in the prison system, the U.S. Court of Appeals for the Fifth Circuit has ruled. *Prison Legal News*, a nonprofit advocate of inmate rights, filed suit over five books banned by the Texas Department of Criminal Justice (TDCJ), under a book-review policy that the parties agree is constitutional.

The five banned books challenged by *Prison Legal News* are *Lockdown America: Police and Prisons in the Age of Crisi*s, *Soledad Brother: The Prison Letters of George Jackson*, *Women Behind Bars*: *The Crisis of Women in the U.S. Prison System*, *Prison Masculinities* and *The Perpetual Prison Machine*: *How America Profits from Crime.*

Women Behind Bars was initially banned in 2008 because it discusses the history of a female inmate who was sexually abused by her uncle. After the book's author and *Prison Legal News* protested, however, the head of Texas prison mail approved the book.

A federal judge previously dismissed the claims as to *Lockdown America* and *Soledad Brother* after finding that no prisoner had requested either book in the relevant time frame. As to the three other books, the court found no First Amendment issue and said that a recent change to the book-review procedures addressed possible due-process issues.

The New Orleans-based federal appeals court affirmed, noting that *Prison Legal News* has standing, even with

regard to books that it sent inmates unsolicited.

"Government interference with one's attempt to sell or distribute written material unquestionably satisfies Article III's injury-in-fact requirement," Judge Edith Brown Clement wrote for a three-judge panel.

The interest of *Prison Legal News* "in distributing books to TDCJ's inmates—which is precisely the type of interest at the core of First Amendment protections—is more than sufficient to support its standing to sue," she added.

"The general right to receive unsolicited communications free from government interference is not only well-established, it is also quite valuable, a fact that is particularly apparent in the prison context: prisoners have an obvious interest, for example, in receiving unsolicited mailings from family members attempting to reconcile, ministries reaching out to convicts, and those attempting to offer legal assistance, because prisoners would often be practically unable to initiate such contact themselves," the 32-page decision stated.

But TDCJ had nevertheless been reasonable in its censorship, the court found. "PLN has not presented sufficient evidence to survive summary judgment on its First Amendment claims," according to the panel, abbreviating *Prison Legal News*. "PLN has, at most, demonstrated that reasonable minds might differ on whether to permit certain books into a general prison population, which is very different from demonstrating that TDCJ's practices and exclusion decisions bear no reasonable relation to valid penological objectives. The principal Supreme Court precedents applicable to PLN's First Amendment claims, which all dealt with facial challenges to prison regulations, emphasize the need for according deference to the judgment of prison administrators, and we conclude that such deference must be at its zenith in the context of challenges to individualized decisions implementing a facially constitutional policy. Any other conclusion would require the federal courts to sit as permanent appeals councils reviewing every individual censorship decision made by state corrections institutions."

Prison Legal News had contended that the TDCJ should let groups appeal for books that may have been banned in the past. But the panel said that the "TDCJ must be permitted to pass rules of general application, even ones that limit prisoner rights, without subjecting such rules to repetitive challenges every time they are applied."

In addition to its advocacy role, *Prison Legal News* puts out a monthly magazine. TDCJ lets inmates subscribe to the magazine and access most of the books distributed by *Prison Legal News*. Reported in: Courthouse News Service, June 7.

sidewalks

Orlando, Florida

A federal judge ruled April 13 that Orlando police violated a protester's free speech rights when they arrested him for writing political messages in chalk on the plaza in front of city hall.

Timothy Osmar, who is homeless, was arrested twice last December for violating a city ordinance that prohibits writing or painting "advertising matter" on city streets and sidewalks. Osmar was arrested the first time after he wrote "the revolution will not be televised." He was arrested again a week later after writing "All I want for Christmas is a revolution."

U.S. District Magistrate Judge David A. Baker, in a ten-page ruling held that the ordinance had been misapplied because it was meant to regulate advertising, not political speech, The judge also said the issues Osmar raised go directly to open debate of important public concerns in the public square.

Baker pointed out that the Orlando Rotary Club has, with the city's blessing, held a chalk art festival in the same plaza for several years. He also noted that Mayor Buddy Dyer encouraged local businesses to chalk up their sidewalks to show support for the Orlando Magic during the 2009 playoffs.

"The city may not selectively interpret and enforce the ordinance based on its own desire to further the causes of particular favored speakers," he wrote. Reported in: ABA Journal online, April 13.

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is it legal?…from page 178)

In 2011, Schrems requested his own data from Facebook and received files with information in 57 categories. The disclosure, Schrems said, showed that Facebook was keeping information he had previously deleted from the Web site, and was also storing information on his whereabouts, gleaned from his computer's I.P. address.

Facebook's data collection practices are being scrutinized in Brussels as European Union policy makers deliberate on changes to the European Data Protection Directive, which was last revised in 1995. The commissioner responsible for the update, Viviane Reding, has cited Facebook's data collection practices in pushing for a requirement that online businesses delete all information held on individuals at the user's request.

Ulrich Börger, a privacy lawyer with Latham & Watkins in Hamburg, said he thought it was unlikely that the European Union would enact laws that would significantly restrict the use of customized advertising, which is at the core of the business model for Web sites like Facebook. It is more likely, Börger said, that lawmakers would require Facebook and other networking sites to revise their consent policies to make them more easy to understand. But it was unlikely that Facebook would be legally prevented from using information from individuals who sign up for the service.

"I don't see any fundamental change," Börger said. "It

comes back to the question of consent. They cannot go so far as to prohibit things that people are willing to consent to. That would violate an individual's freedom to receive services they want to receive." Reported in: *New York Times*, April 12.

Annapolis, Maryland

On April 9, Maryland became the first state in the nation to ban employers from requesting access to the social media accounts of employees and job applicants. The state's General Assembly passed legislation that would prohibit employers from requiring or seeking user names, passwords or any other means of accessing personal Internet sites such as Facebook as a condition of employment.

The bill had its genesis in a controversy that began when Maryland Corrections Officer Robert Collins returned to work following a leave of absence taken after the death of his mother. While completing a re-certification process needed to return to duty, Collins was asked for his personal Facebook password, ostensibly to check for known gang activity. He refused, and obtained the assistance of the Maryland chapter of the American Civil Liberties Union, which quickly filed a lawsuit, bringing the case onto the national stage.

Collins's case reached the halls of Congress, where several lawmakers gave speeches against the practice of employers asking for passwords or "friending" applicants. Lawmakers in the House and Senate are working on legislation that would ban the practice nationally.

Maryland ACLU legislative director Melissa Goemann said that Maryland "has trail-blazed a new frontier in protecting freedom of expression in the digital age, and has created a model for other states to follow."

Collins said he is "excited to know that our esteemed policymakers in Maryland found it important to protect the privacy of Maryland's citizens. I hope that other state legislatures, and more importantly the federal government, follow Maryland's lead and ensure these essential protections for all Americans nationwide." Reported in: The Hill, April 9.

Richmond, Virginia

The Virginia ACLU warned the Virginia State Police March 28 that it might be violating federal law and the U.S. Constitution by requiring trooper applicants to make available their social media accounts during the hiring process.

The practice of forcing job applicants to reveal their private communications to employers "is facing tough public criticism and legal scrutiny," ACLU Executive Director Kent Willis said in a statement, adding that the government should not be allowed to force its way into "our most intimate and confidential communications."

In a letter faxed to Virginia State Police Superintendent W. Steven Flaherty, ACLU of Virginia Legal Director Rebecca K. Glenberg asked that state police discontinue the practice, described as "shoulder surfing."

"Absent a concrete reason to believe that a potential employee is engaged in wrongdoing of which his Facebook account is likely to contain evidence, these communications are simply none of the VSP's business," Glenberg wrote. "Looking at this information is akin to opening an applicant's mail or listening in on his telephone calls. Such eavesdropping intrudes on the privacy of not only the job applicant, but his online friends and correspondents."

State police spokeswoman Corinne Geller confirmed the department has received the ACLU's letter and that it is being evaluated. "We will respond back to the ACLU as appropriate," she said. "In the meantime, we will continue our existing hiring practices," Geller said. "As we have stated before, we feel our investigative background process is necessary and appropriate for the job our applicants are expected to do and the authority granted to such individuals upon being hired on to the Virginia State Police."

The ACLU said any employer who engages in shoulder surfing may be violating the Stored Communications Act, a federal law that makes it illegal to intentionally access stored electronic communications without valid authorization. According to at least one court ruling, coercing job applicants to provide access to their social media accounts violates this law, the ACLU said.

Government employers may also be violating the Fourth Amendment right to be free from unreasonable searches and seizures and the First Amendment right to freedom of speech, the ACLU said.

Willis noted that the Maryland Department of Public Safety and Correctional Services revised its social media policy last year after the ACLU complained.

Virginia State Police disclosed earlier in the month that, as of January 1, they require all law-enforcement applicants to provide access to their social media accounts as a pre-employment condition. Applicants are not required to provide usernames or passwords, but they must log on to their social networking sites and allow a state police background investigator to review the contents.

State police described the practice as merely an extension of its already meticulous background screening process, which includes interviews with an applicants' former employers, neighbors and checks of their criminal history and credit.

"Providing Virginia's citizens with the highest quality and caliber of state troopers requires a comprehensive vetting process," Flaherty said. "The VSP is a unique public agency in the services it provides; therefore, in today's society, the virtual character check is just as important as the 'physical' character check."

Dana G. Schrad, executive director of the Virginia Association of Chiefs of Police, said checking applicants' social networking sites seem to be a growing trend among law-enforcement agencies. "This is the modern-day

electronic version of a neighborhood check," Schrad said. "When you were doing background checks 25 years ago … you visited neighbors and you called the people that lived around (the applicant) for the past twenty years and you got a character reference."

"But people don't live like that anymore," Schrad added. "They don't have the same contact with their neighbors and they move around a lot. And really their neighborhood now is Facebook. So that's how you find out a lot about who someone's associates are and how they conduct themselves."
Reported in: *Richmond Times-Dispatch*, March 28.

Google

Mountain View, California

When Google first revealed in 2010 that cars it was using to map streets were also sweeping up sensitive personal information from wireless home networks, it called the data collection a mistake. On April 14, federal regulators charged that Google had "deliberately impeded and delayed" an investigation into the data collection and ordered a $25,000 fine on the search giant.

The finding, by the Federal Communications Commission, and the exasperated tone of the report were in marked contrast to the resolution of a separate inquiry two years ago. That investigation, by the Federal Trade Commission, accepted Google's explanation that it was "mortified by what happened" while collecting information for its Street View project, and its promise to impose internal controls.

But since then, the FCC said, Google repeatedly failed to respond to requests for e-mails and other information and refused to identify the employees involved.

"Although a world leader in digital search capability, Google took the position that searching its employees' e-mail 'would be a time-consuming and burdensome task,' " the report said. The commission also noted that Google stymied its efforts to learn more about the data collection because its main architect, an engineer who was not identified, had invoked his Fifth Amendment right against self-incrimination.

When the commission asked Google to identify those responsible for the program, Google "unilaterally determined that to do so would 'serve no useful purpose,' " according to the FCC report.

The data collection, which took place over three years, was legal because the information was not encrypted, the FCC ultimately determined.

A Google spokeswoman said that "we worked in good faith to answer the FCC's questions throughout the inquiry, and we're pleased that they have concluded that we complied with the law."

Google still has the data, which it said it has never looked at and has never used in its products or services. It said it intended to delete the information once regulators gave it permission.

While Google's original intentions and actions with the project are still unclear, the commission's report and fine are likely to energize an ongoing debate about Internet privacy. The more companies like Google and Facebook know about their users, the more attractive they are to advertisers, which drive the vast majority of their income. Google's introduction in March of a new privacy policy — one that allows more comprehensive tracking of its users' actions — provoked a firestorm of criticism.

That was only the latest privacy imbroglio the company found itself in the middle of. Some politicians are becoming skeptical. Senator Al Franken, a Democrat of Minnesota who is in charge of a subcommittee on privacy, said in a recent speech that companies like Google and Facebook accumulated data on users because "it's their whole business model."

"And you are not their client; you are their product," he added.

Earlier controversies generally focused on information that users willingly provided. With its Street View project, Google was taking data from people who did not even know that the company was literally outside the door, peering in. European and Canadian regulators who have examined the data Google collected in the project in their own countries found that it included complete e-mail messages, instant messages, chat sessions, conversations between lovers, and Web addresses revealing sexual orientation, information that could be linked to specific street addresses.

When Google was repeatedly asked if it had searched for all responsive documents and provided complete and accurate answers to all the FCC's questions, it declined to respond, Michele Ellison, chief of the FCC's Enforcement Bureau, said. Google ultimately provided the information requested under threat of subpoena.

The FCC orders fines on companies for impeding investigations about once a year. The commission found that Google had violated provisions of the Communications Act of 1934. Of the $25,000 penalty, Ellison said, "It's an appropriate fine based on evidence that the investigation was deliberately impeded and our precedent." Google, which for the last year has been run by Larry Page, one of its founders, reported net income of $2.89 billion in the first quarter of 2012.

Scrutiny of Google's privacy policies is more intense in Europe, where the Street View issue first emerged, than it is in the United States. Last year, for example, France fined the company 100,000 euros, or about $140,000 at the time, for Street View privacy violations.

What Google was gathering as its cars drove up and down many thousands of streets is technically called payload data, which simply means the content of Internet communications, including e-mail. On April 27, 2010, responding to rumors about its Street View project, Google said it "does not collect or store payload data."

Two weeks later it acknowledged that was "incorrect," saying, "It's now clear we have been mistakenly collecting samples of payload data." In October 2010, it acknowledged that the data was more than fragments.

Google's response to the inquiry puzzled some experts. "If it really was a mistake, you would expect the company to do everything possible to cooperate with the investigation," said Danny Sullivan of the blog Search Engine Land. "On the upside, it's reassuring that the FCC itself believes Google had no plans to use the information."

The FCC did not examine the actual data that Google collected, but its report quoted the investigation by the Commission Nationale de l'Informatique et des Libertes, the French data privacy regulator, as finding, for example, e-mails between married individuals seeking to have an affair. First names, e-mail addresses and physical addresses could all be discerned.

After reviewing all the information it could get from Google, the FCC said it could not find a clear precedent to take enforcement action on the data collection. But then, it said, it still had "significant factual questions" about what really happened with the data and why it was collected in the first place.

Privacy advocates said the FCC report was only a start. "I appreciate that the FCC sanctioned Google for not cooperating in the investigation, but the much bigger problem is the pervasive and covert surveillance of Internet users that Google undertook over a three-year period," said Marc Rotenberg, executive director of the Electronic Privacy Information Center (EPIC). He said that he would ask the Justice Department to investigate Google over wiretapping.

On April 20 EPIC filed a request under the Freedom of Information Act for the FCC to release its un-redacted report on the investigation. The version of the report released by the FCC redacted information about the total volume of data Google collected and the company's intent, according to the group.

EPIC also requested all internal documents the FCC created as part of its investigation, briefings with lawmakers about the case and any communications with other agencies over the issue.

Coincidentally, the FCC opened its investigation of the Street View project on the same day in October 2010 that the FTC ended its inquiry. While staff members from the two entities spoke about their efforts, they were looking at potential violations of different statutes and their investigations took place separately.

Some FCC staff members argued strongly that Google should be charged with a violation of the Communications Act, and the agency and Google spent weeks debating whether Google had violated the Wiretap Act or the Communications Act.

The FCC's enforcement division finally declined to charge Google with violating the Communications Act after determining that there was no precedent for applying the statute to Wi-Fi communications. But by publicly reprimanding Google for its conduct, the FCC is hoping that Congress will see that the law has not kept up with advances in digital communications and will rewrite the statutes. Wi-Fi encryption technology did not exist when the Communications Act was written.

Google argued that the few precedents that do apply favor a broad interpretation of what is permissible under the two laws.

People close to the discussion said that determination was affected by inconsistent language between the two statutes. The Communications Act prohibits intercepting radio communications "except as authorized by" the Wiretap Act.

The Wiretap Act says it is "not unlawful to" intercept unencrypted communication, but it does not give specific permission for the interception of unencrypted communications.

Federal courts have generally given a broad interpretation, however. But the FCC was not able to determine if there had been actions that clearly would violate the statutes — say, if Google intercepted and made use of encrypted information — because the Google engineer who would know invoked his Fifth Amendment right.

The determination not to charge Google with a Communications Act violation was made by the enforcement division staff. Google can decide whether to oppose the obstruction charge and fight the fine, eventually taking the fight to the five-member commission and perhaps to federal court.

In Europe, where the outcry against Google was greatest, most government data protection regulators have settled their disputes with the company.

Some countries, like Ireland, asked Google in 2010 to simply destroy the data it had gathered illegally in their jurisdictions. Google informed Ireland and other countries that it had done so and no penalties were levied. On April 5, the Dutch Data Protection Authority closed its investigation after Google gave residents in the Netherlands the option of removing their Wi-Fi routers from Google's global tracking database.

But in Germany, where Google's collection of personal data was first uncovered by a regulator in Hamburg, two proceedings are officially up and running.

The Hamburg prosecutor's office is still pursuing a criminal investigation, which it opened in May 2010, into whether Google broke German law by illegally intercepting private data through electronic means. Jens Ferner, a lawyer in Alsdorf, Germany, whose 2010 complaint over Google's Wi-Fi taping activities in the area around Aachen, Germany, led the Hamburg prosecutors to open their investigation, said prosecutors have not apprised him of the status or details of their investigation or whether charges would be brought.

"The impression I have is that Google has ignored the authorities when it comes to disclosure of key information," Ferner said.

Johannes Caspar, the Hamburg data protection commissioner, said Google provided his office in 2010 with a computer hard drive with what the company said was all of the Wi-Fi payload data that Google had collected in Germany. Technicians in the Hamburg office reviewed the information collected within the city-state of Hamburg. The analysis, Caspar said, showed that Google had recorded e-mails and fragments of Internet conversations between individuals, as well as passwords for e-mail accounts, postings in social networks and on dating sites, and photographs.

"What I saw represented a very grave violation of data protection law," Caspar said.

Initially, Google had declined to give German authorities any information at all, arguing that disclosing such information would violate German telecommunications law, which forbids information networks such as phone operators from disclosing the private communications of users.

But Caspar pressed for the information and Google provided a hard drive, as it did in the Netherlands and France. In other countries, the company let privacy regulators view the data collected in their countries remotely via Internet from a local Google office.

Caspar said he and the other European data regulators had no way to independently verify Google's claim that it had handed over a complete copy of the information collected in their countries. "Google has given us everything we asked for," Caspar said. "The facts are on the table."

Caspar has said that he was delaying his own administrative review of the situation until the Hamburg prosecutor decides whether or not to press criminal charges.

Gwendal Le Grand, the head of the information technology department at the French Data Protection Commission in Paris, said the hard drive Google provided investigators there included the full text of e-mails, bank passwords, and all types of conversations and content. A person with knowledge of the investigation in the Netherlands said that analysis of Dutch payload data revealed a similar collection of e-mail, account passwords and text links.

The French regulator settled its case against Google in March when it fined the company 100,000 euros ($132,000) out of a maximum levy of 150,000 euros allowed by law.

But that may change under plans being considered by European lawmakers to increase the financial penalties for violating data protection law. Under a proposed revision of Europe's data protection directive in Brussels, Google and other violators could be fined up to 2 percent of annual sales.

In Google's case, that would have equated to a fine of 758 million euros. The proposed increase in fines must still be approved by the European Parliament and Council of Ministers.

J. Trevor Hughes, president of the International Association of Privacy Professionals, said the Google case represented what happened when technical employees of technology companies made "innocent" decisions about collecting data that could infuriate consumers and in turn invite regulatory inquiry.

"This is one of the most significant risks we see in the information age today," he said. "Project managers and software developers don't understand the sensitivity associated with data." Reported in: *New York Times*, April 14, 15; *The Hill*, April 20.

terrorist speech

Boston, Massachusetts

Late last year, a jury in Boston convicted Tarek Mehanna, a 29-year-old pharmacist born in Pittsburgh, of material support for terrorism, conspiring to provide material support to terrorists and conspiring to kill in a foreign country, after a 35-day trial. On April 12, Mehanna was sentenced to 17-and-a-half years in prison.

Hearing this, most Americans would probably assume that the FBI caught a major homegrown terrorist and that his sentence was reasonable punishment for someone plotting to engage in terrorism. The details, however, reveal this to be one of the most important free speech cases since *Brandenburg v. Ohio* in 1969.

Mehanna's conviction was based largely on things he said, wrote and translated. Yet that speech was not prosecuted according to the Brandenburg standard of incitement to "imminent lawless action" but according to the much more troubling standard of having the intent to support a foreign terrorist organization.

Mehanna was convicted and sentenced based on two broad sets of facts. First, in 2004, Mehanna traveled with a friend to Yemen for a week, in search, the government said, of a jihadi training camp from which they would then proceed to Iraq to fight American nationals. The trip was a complete bust, and Mehanna returned home.

Some of his friends continued to look for ways to join foreign conflicts. One even fought in Somalia. But Mehanna stayed home, completed a doctorate in pharmacology and practiced and taught in the Boston area. But the Yemen trip and the actions of his friends were only one part of the government's case.

For the government, Mehanna's delivery of "material support" consisted not in his failed effort to join jihadi groups he never found, nor in financial contributions he never made to friends trying to join such groups, but in advocating the jihadi cause from his home in Sudbury.

Mehanna's crimes were speech crimes, even thought crimes. The kinds of speech that the government successfully criminalized were not about coordinating acts of terror or giving directions on how to carry out violent acts. The speech for which Mehanna was convicted involved the religious and political advocacy of certain causes beyond American shores.

The government's indictment of Mehanna listed the

following acts, among others, as furthering a criminal conspiracy: "watched jihadi videos," "discussed efforts to create like-minded youth," "discussed" the "religious justification" for certain violent acts like suicide bombings, "created and/or translated, accepted credit for authoring and distributed text, videos and other media to inspire others to engage in violent jihad," "sought out online Internet links to tribute videos," and spoke of "admiration and love for Usama bin Laden."

It is important to appreciate that those acts were not used by the government to demonstrate the intent or mental state behind some other crime in the way racist speech is used to prove that a violent act was a hate crime. They were the crime, because the conspiracy was to support Al Qaeda by advocating for it through speech.

Much of Mehanna's speech on Web sites and in IM chats was brutal, disgusting and unambiguously supportive of Islamic insurgencies in Iraq, Afghanistan and Somalia. In one harrowing IM chat, which the government brought up repeatedly during the trial, he referred to the mutilation of the remains of American soldiers in response to the rape of a 14-year-old Iraqi girl as "Texas BBQ." He wrote poetry in praise of martyrdom. But is the government right that such speech, however repulsive, can be criminalized as material support for terrorism?

In the 2010 Supreme Court decision *Holder v. Humanitarian Law Project*, Chief Justice John G. Roberts Jr. declared that for speech to qualify as criminal material support, it has to take the form of expert advice or assistance conveyed in coordination with or under the control of a designated foreign terrorist organization. In that decision, Justice Roberts reaffirmed that "under the material-support statute, plaintiffs may say anything they wish on any topic" and pointed out that "Congress has not sought to suppress ideas or opinions in the form of 'pure political speech.' " Justice Roberts emphasized that he wanted to "in no way suggest that a regulation of independent speech would pass constitutional muster, even if the Government were to show that such speech benefits foreign terrorist organizations."

The government's case against Mehanna, however, did not rest on proving that his translations were done in coordination with Al Qaeda. Citing no explicit coordination with or direction by a foreign terrorist organization, the government's case rested primarily on Mehanna's intent in saying the things he said — his political and religious thoughts, feelings and viewpoints.

The prosecution's strategy, a far cry from Justice Roberts's statement that "independent advocacy" of a terror group's ideology, aims or methods is not a crime, produced many ominous ideas. For example, in his opening statement to the jury one prosecutor suggested that "it's not illegal to watch something on the television. It is illegal, however, to watch something in order to cultivate your desire, your ideology." In other words, viewing perfectly legal material can become a crime with nothing other than a change of heart. When it comes to prosecuting speech as support for terrorism, it's the thought that counts.

That is all troubling enough, but it gets worse. Not only has the government prosecuted a citizen for "independent advocacy" of a terror group, but it has prosecuted a citizen who actively argued against much of what most Americans mean when they talk about terrorism.

On a Web site that the government made central to the conspiracy charge, Mehanna angrily contested the common jihadi argument that American civilians are legitimate targets because they democratically endorse their government's wars and pay taxes that support these wars.

Mehanna viewed Muslim attacks on foreign occupying militaries as justified but rejected the Qaeda doctrine that the civilian citizens of a foreign country at war with Muslims can be targeted. His doctrine was that "those who fight Muslims may be fought, not those who have the same nationality as those who fight."

The centerpiece of the government's case against Mehanna's speech activities was a translation of a text titled "39 Ways to Serve and Participate in Jihad." The government described this text, written by a late pro-jihad Saudi religious scholar, as a "training manual for terrorism." It is nothing of the sort. It is a fairly routine exercise of Islamic jurisprudence explaining to pious Muslims how they can discharge what many of them believe to be a duty to contribute to wars of self-defense.

This text does explain that in Islamic law a Muslim may "go for jihad" or "collect funds for the mujahidin." But it also explains that, in place of fighting or sending money, a Muslim can assuage his conscience and take care of widows and children, praise fighters, pray for fighters, become physically fit, learn first aid, learn the Islamic rules of war, have feelings of enmity for one's enemies, spread news about captives and abandon luxury.

The act of translating this text is far from incitement to violent action. The text in fact shows Muslims numerous ways to help fellow Muslims suffering in their own lands, without engaging in violence. Instead of this common-sense reading, however, the government did something extraordinary. It used this text of Islamic law to help define for us what should count as a violation of our own material support law.

Everything Mehanna did, from hiking to praying, was given a number in the indictment based on this text as an act of material support for jihad. For example, his online discussion with a friend about working out and exercising should, in the government's words, be "placed next to the directives in 39 Ways (Step 25: 'Become Physically Fit')." Federal prosecutors, in effect, used a Saudi religious scholar to tell us what our "material support" statute means. Reported in: *New York Times*, April 21.

intellectual freedom bibliography

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