

newsletter
on
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freedom

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Texas conservatives push through controversial curriculum changes

After three days of turbulent meetings, the Texas Board of Education on March 12 approved a social studies curriculum that will put a conservative stamp on history and economics textbooks, stressing the superiority of American capitalism, questioning the Founding Fathers' commitment to a purely secular government and presenting Republican political philosophies in a more positive light.

The vote was 10 to 5 along party lines, with all the Republicans on the board voting for it.

The board, whose members are elected, has influence beyond Texas because the state is one of the largest buyers of textbooks. In the digital age, however, that influence has diminished as technological advances have made it possible for publishers to tailor books to individual states.

The state's \$22 billion education fund is among the largest educational endowments in the country. Texas uses some of that money to buy or distribute a staggering 48 million textbooks annually—which rather strongly inclines educational publishers to tailor their products to fit the standards dictated by the Lone Star State.

California is the largest textbook market, but besides being bankrupt, it tends to be so specific about what kinds of information its students should learn that few other states follow its lead. Texas, on the other hand, was one of the first states to adopt statewide curriculum guidelines, back in 1998, and the guidelines it came up with (which are referred to as TEKS—pronounced “teaks”—for Texas Essential Knowledge and Skills) were clear, broad and inclusive enough that many other states used them as a model in devising their own. And while technology is changing things, textbooks—printed or online—are still the backbone of education.

In recent years, board members have been locked in an ideological battle between a bloc of conservatives who question Darwin's theory of evolution and believe the Founding Fathers were guided by Christian principles, and a handful of Democrats and moderate Republicans who have fought to preserve the teaching of Darwinism and the separation of church and state.

At board meetings in January and March Republicans on the board passed more than 100 amendments to the 120-page curriculum standards affecting history, sociology and economics courses from elementary to high school. The standards were proposed by a panel of teachers.

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Irvine incident poses question: is heckling free speech?

Eleven people were arrested February 7 during a rousing lecture at the University of California at Irvine, where Israeli Ambassador Michael Oren came to talk about U.S.-Israel relations. Oren was interrupted ten times while trying to give his speech before 500 people at the UCI Student Center, where there was heavy security. Oren took a twenty-minute break after the fourth protest, asked for hospitality and resumed his speech, only to be interrupted again by young men yelling at him every few minutes. Many members of the audience also applauded Oren.

After the tenth interruption, several dozen students who opposed Oren's talk got up and walked out and staged a protest outside. It was not clear whether they were members of the UCI Muslim Student Union, which issued an email earlier in the day condemning Oren's appearance on campus.

Oren continued talking, completing his speech at 6:42 p.m. Originally, he planned to take questions from the audience. But that was canceled after the repeated delays.

UCI Police Chief Paul Henisey said it was not initially clear whether any of the protesters were UCI students. However, police later learned that eight of the arrestees were Irvine students. The remaining three were students at the University of California at Riverside.

Mark Petracca, a UCI political science professor, lost his temper during the event and yelled, "This is embarrassing . . . Shame on all of you." UCI Chancellor Michael Drake also told the audience that he was embarrassed by the outburst. Drake and Petracca were booed by many people, and applauded by others.

Before the event UCI's Muslim Student Union said in an email today that its members "condemn and oppose the presence of Michael Oren, the ambassador of Israel to the United States, on our campus today. We resent that the Law School and the Political Science Department on our campus have agreed to cosponsor a public figure who represents a state that continues to break international and humanitarian law and is condemned by more UN Human Rights Council resolutions than all other countries in the world combined."

But the group did not take responsibility for the disruption, although it acknowledged that some of its members participated. Chuck DeVore, a Republican state assemblyman from Irvine who is running for the U.S. Senate seat currently held by Barbara Boxer, asked Chancellor Drake in a letter to ban the group. "It's time to ban this organization from campus," he wrote. "It's not contributing anything to the value of campus."

The incident raised a number of First Amendment issues. Some, especially among those sympathetic to Oren's views, decried the heckling as an attempt to deny the ambassador his right to speak. This was the position of university officials.

"This behavior is intolerable. Freedom of speech is among the most fundamental, and among the most cherished, of the bedrock values our nation is built upon," Chancellor Drake declared in a statement. "A great university depends on the free exchange of ideas. This is non-negotiable. Those who attempt to suppress the rights of others violate core principles that are the foundation of any learning community. We cannot and do not allow such behavior."

"That's definitely not free speech," Jarret S. Lovell, a professor of politics at California State University at Fullerton, said of the interruptions at Irvine. Lovell is a scholar of protest and the author of *Crimes of Dissent: Civil Disobedience, Criminal Justice, and the Politics of Conscience*. Not only does he think the tactic is wrong in that it denies a hearing to whomever is being interrupted, but he thinks it fails to win over anyone.

"When you only hear sound bites" from those interrupting, the students come off as intolerant, he said. "There are so many better ways to demonstrate."

As one who identifies himself as critical of Israel's policies and sympathetic to the Palestinian cause, Lovell said that the Irvine hecklers should realize what will happen next. "It's only a matter of time until Norman Finkelstein speaks at UCI and Jewish groups shout him down," Lovell said of the controversial scholar viewed by many Jews as anti-Israel.

Wayne Firestone, national president of Hillel, took a similar view. He said that the interruptions of Israel's ambassador of course mattered to many Jewish students. But Firestone noted that the ambassador was invited by the law school and political science department, and he said that the issues involved would matter regardless of the topic of the talk or the views of the speaker.

Firestone said the idea that interruptions of a speaker are part of free speech is "a candidate for the worst idea of the year." He added that "if a precedent is set on this issue" that it's OK to shout during a campus talk, "then any group that opposes any speaker can literally stop discussion and debate from taking place" by interrupting repeatedly during a talk. Firestone said that there should be many opinions on campus, and that all views should be expressed, but that to do so, you need "a notion of respect and fair play" that allows people to give their talks.

The Foundation for Individual Rights in Education blog featured similar views: "Failing to punish offenders appropriately is likely to threaten the free speech of future speakers by effectively condoning a 'heckler's veto' through disruptive actions. That would make a mockery of the First Amendment."

But a different argument was advanced by some national Muslim leaders. They maintain that interrupting a campus speech—even repeatedly—should be seen as a protected form of speech.

"The students voiced political views to shame the

representative of a foreign government embroiled in controversy for its outrageous violations of international humanitarian and human rights law. Delivering this message in a loud and shocking manner expressed the gravity of the charges leveled against Israeli policies, and falls within the purview of protected speech,” said a letter released by the Council on American–Islamic Relations.

That statement followed one by Salam Al-Marayati, executive director of the Muslim Public Affairs Council, which said: “These students had the courage and conscience to stand up against aggression, using peaceful means. We cannot allow our educational institutions to be used as a platform to threaten and discourage students who choose to practice their First Amendment right.”

Hussam Ayloush, executive director of the Los Angeles branch of the Council on American–Islamic Relations, said that it was unfair to say that the students who interrupted were trying to shut down the talk because they voluntarily left the room after each interruption, and let the talk start again (until the next outburst at least) and eventually let it finish. “Let’s put it in perspective. The speaker had an hour to speak, and they each had less than a minute.”

Ayloush noted that he is frequently interrupted when he gives lectures, and that it goes with the territory. “We firmly believe that both the representative of the foreign government had the full right to speak and the students being addressed have the right to express their speech, too,” he said.

Asked why it might not be better to organize protests with a rally outside or leaflets or signs that don’t interrupt a talk, Ayloush said such approaches might well be better, but that this was beside the point and that he wouldn’t exclude the heckling strategy used at Irvine. “These are all tactics

and different methods of expressing their free speech, and everyone might have their favorite,” he said. “The First Amendment was never intended to be exclusively polite and courteous.”

Members of the Irvine faculty offered differing views. In an op-ed piece for the *Los Angeles Times*, Irvine Law School Dean Erwin Chemerinsky wrote:

“College campuses, especially at public universities, are places where all ideas should be expressed and debated. No speech ever should be stopped or punished because of the viewpoint expressed. Of course, there must be rules to regulate the time, place and manner of such expression to preserve order and even to make sure that speech can occur.

“These general principles are unassailable, but their application to recent events at the University of California, Irvine, has attracted international attention. Israeli Ambassador to the United States Michael Oren was invited by several sponsors, including the law school (of which I am dean) and the political science department (of which I am a member) to speak at the university on Feb. 8.

“Prior to this event, campus officials heard rumors that some members of the Muslim Student Union planned to disrupt the ambassador’s speech by having a series of students yell so that he could not be heard. One after another they would rise and shout, so that as each was escorted away, another would be there to make sure that the ambassador did not get to speak. When asked, the officials of the Muslim Student Union denied any plans to do this.

“Unfortunately, this is exactly what occurred. After the first disruptions, the audience was admonished that such behavior was not acceptable within the university and that those who engaged in such conduct would be arrested and

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face student disciplinary proceedings. Despite these warnings, eleven individuals rose and shouted so that the ambassador could not be heard. At one point he left the stage, but thankfully was persuaded to return and deliver his address.

"Eleven individuals were arrested, and those who are UCI students are facing disciplinary action. In the last week, I have been deluged with messages from those saying the disruptive students did nothing wrong and deserve no punishment, and also from those saying that the students should be expelled and that others in the audience who cheered them on should be disciplined.

"Both of these views are wrong. As to the former, there are now posters around campus referring to the unjust treatment of the 'Irvine 11' and saying they were just engaging in speech themselves. However, freedom of speech never has been regarded as an absolute right to speak out at any time and in any manner. Long ago, Justice Oliver Wendell Holmes explained that there was no right to falsely shout 'fire' in a crowded theater.

"The government, including public universities, always can impose time, place and manner restrictions on speech. A person who comes into my classroom and shouts so that I cannot teach surely can be punished without offending the First Amendment. Likewise, those who yelled to keep the ambassador from being heard were not engaged in constitutionally protected behavior.

"Freedom of speech, on campuses and elsewhere, is rendered meaningless if speakers can be shouted down by those who disagree. The law is well established that the government can act to prevent a heckler's veto—to prevent the reaction of the audience from silencing the speaker. There is simply no First Amendment right to go into an auditorium and prevent a speaker from being heard, no matter who the speaker is or how strongly one disagrees with his or her message.

"The remedy for those who disagreed with the ambassador was to engage in speech of their own, but in a way that was not disruptive. They could have handed out leaflets, stood with picket signs, spoken during the question-and-answer session, held a demonstration elsewhere on campus or invited their own speakers.

"At the same time, I also disagree with those who call for draconian sanctions against these students or of punishment for a larger group. Only the students who were actually disruptive should be punished. Whether there will be criminal prosecutions is up to the Orange County district attorney. Within the university, the punishment should be great enough to convey that the conduct was wrong and unacceptable, but it should not be so severe as to ruin these students' educational careers.

"As a matter of First Amendment law, this is an easy case. It would be so no matter the identity or views of the speaker or of the demonstrators. Perhaps some good can come from this ugly incident if the university uses it as an occasion to help teach its students about the meaning of free

speech and civil discourse."

Chemerinsky's article prompted a response from Professor of Middle Eastern History Mark Levine. He wrote:

"The eleven students who each briefly disrupted Israeli Ambassador Michael Oren's speech last week at UC Irvine have no First Amendment protection for their actions and deserve to be punished, writes my colleague, law school Dean Erwin Chemerinsky. Reading Chemerinsky's piece, you'd think a group of hysterically angry Muslim men prevented Oren from speaking at all. But the situation, as a look at a video recording of the event makes clear, was much more complicated.

"Chemerinsky correctly points out that government bodies, including public universities, have the right to regulate speech on campus; otherwise, any speaker—professors included—could be shouted off stage by those who disagree. He points to Supreme Court Justice Oliver Wendell Holmes' observation that there's no constitutional protection for shouting 'fire' in a crowded theater.

"But can we really compare these brief disturbances to yelling 'fire' in a theater? Oren was scheduled to speak and answer questions for an hour and a half. The protests by the students were clearly aimed at disrupting his speech, but it's just as clear that they were not going to scuttle it. Each outburst was brief, and no students were forcibly removed. As Chancellor Michael V. Drake pointed out in his condemnation of the protests the next day, Oren was able to finish his speech; indeed, there was enough time left for him to answer audience questions had he chosen to do so.

"Moreover, UC Irvine's policies on student conduct offer little guidance as to whether the protests against Oren's speech crossed the line. The section on free speech and advocacy I was pointed to by university officials sets no clear boundaries; it states, in part, 'The university is committed to assuring that all persons may exercise the constitutionally protected rights of free expression, speech, assembly and worship,' and that protests 'must not, however, interfere with the university's obligation to protect rights of all to teach, study and fully exchange ideas.'

"But since Oren was not ultimately prevented from speaking, how the 'Irvine 11' actually interfered with the university's obligation to protect the Israeli ambassador's First Amendment rights is unclear.

"There is another key issue my colleague didn't touch on: the utter disparity in power between the students and the views they represent, and Oren and the government he represents. There is little doubt that the law school and the political science department, each of which co-sponsored the event, rightfully saw his presence as a chance to engage an important actor on issues of concern to the UC Irvine community. From the Israeli side, however, Oren's appearance was part of a sophisticated effort by the Israeli government and its supporters to present Israel in the most positive light possible. Oren was speaking not as an academic

presenting research (his former job) but as an official representative of his government. With a government and largely sympathetic media behind him, Oren can get his points across despite a handful of fleeting outbursts by genuinely aggrieved students.

"In fact, hard-line advocates for Israel aren't strangers to 'uncivil' behavior against adversaries. In 2002, the Jerusalem-based World Union of Jewish Students published, with sponsorship by the Jewish Agency for Israel, a manual for Israel advocacy titled the 'Hasbara Handbook' (hasbara is the Hebrew word for 'explanation,' though the term is associated with government propaganda). It specifically lists 'name calling' as the first of 'seven basic propaganda devices' available for use by activists. It also declares, 'For the Israel activist, it is important to be aware of the subtly different meanings that well-chosen words give. Call 'demonstrations' 'riots', many Palestinian organizations 'terror organizations', and so on.'

"Given this, calling for a pound of flesh from the Muslim students for their protest seems disingenuous to say the least.

"Most disturbing is the chilling effect on free speech and dissent the response to the student protests could have on UC Irvine. Following the incident, university officials sent an e-mail to the entire student body warning that similar protests would be considered illegal and create 'a very serious situation.' Specifically, and without elaboration, they informed them that 'if anyone "without authority of law, willfully disturbs or breaks up any assembly or meeting that is not unlawful in its character . . ." [they] can be charged with a misdemeanor.'

"Imagine how a 19-year-old student would react to being told that she could be arrested and face expulsion from the university for merely engaging in vigorous protest against a speaker who supports forced female genital mutilation or the execution of homosexuals—or, more to the point, a speaker who represents a government that engaged in these practices.

"Marginalized voices sometimes have little recourse except to push the boundaries of polite debate to get their messages heard. They may ruffle feathers, upset audience members and perhaps even exercise extremely poor tactical and political judgment. In this case, the 'Irvine 11' played into deeply ingrained stereotypes of irrational and unreasonably angry Muslim men. But should they be punished without clear standards in place and when similarly rowdy protests in the past led neither to arrests nor university discipline?

"My hope is that the members of the UC Irvine community can use this event as a teachable moment, coming together as a campus more clearly to define the limits of acceptable protest, to understand the realities behind the passions displayed by the 'Irvine 11' and to help figure out how to bridge the chasm between Muslim and Jewish students on campus. Turning UC Irvine instead into a First Amendment battleground would only undermine the

vigorous give-and-take essential to the preservation of free speech and academic freedom on our campus."

Yet another perspective holds that some, modest interruption (less than what took place at Irvine) may be seen as an expression of free speech that doesn't limit the right of a speaker to be heard.

Cary Nelson, national president of the American Association of University Professors, said he holds that view, although he said this was not a question on which AAUP has a policy. And he said that he believes that "most faculty members regard interruption as unacceptable."

Nelson said he likes the speech/protest policy of the University of Michigan. That policy says: "Within the confines of a hall or physical facility, or in the vicinity of the place in which a member of the university community, invited speaker, or invited artist is addressing an assembled audience, protesters must not interfere unduly with communication between a speaker or artist and members of the audience. This prohibition against undue interference does not include suppression of the usual range of human reactions commonly displayed by an audience during heated discussions of controversial topics. Nor does this prohibition include various expressions of protest, including heckling and the display of signs (without sticks or poles), so long as such activities are consistent with the continuation of a speech or performance and the communication of its content to the audience."

Along these lines, Nelson said that some brief demonstration against a speaker doesn't strike him as an assault on free speech "so long as the speaker is allowed to continue." He added that "an interruption that signals extreme objection to a speaker's views is part of the acceptable intellectual life of a campus, but you have to let the speech go on," and he said that he did not believe that repeated interruptions were appropriate in that they would disrupt a talk. "Free speech doesn't mean you are able to trample a campus event."

Nelson said that one of the most moving and effective protests he ever attended was as an undergraduate at Antioch College in the early 1960s. George Lincoln Rockwell, the founder of the American Nazi Party, was the speaker. No one shouted at him, although the students considered him hateful.

"The audience was totally silent and then, during the question period, no one would ask him a question and he began cursing at the audience, but no one would speak," Nelson said. "To me it was incredibly moving because of the solidarity of the audience, and of the possibility of a certain kind of silent witness," he said. Nelson said he wished more protests today used such an approach in which opposition is totally clear but no one tries to stop the talk.

"There is a tremendous sense of dignity in silent witness," he said. Reported in: *Orange County Register*, February 8, 24; insidehighered.com, February 18; *Los Angeles Times*, February 18, 22. □

FCC broadband plan to focus on privacy, competition

The Federal Communications Commission's ambitious national broadband plan will include recommendations aimed at ensuring consumers' online privacy, according to an executive summary released March 15.

While the six-page summary was short on details, the FCC said it intends to suggest measures to "clarify the relationship between users and their online profiles ... including the obligation of firms collecting personal information to allow consumers to know what information is being collected, consent to such collection, correct it if necessary, and control disclosure of such information to third parties."

The FCC in January asked for comments about online privacy in response to a proposed notice of inquiry submitted by the digital rights group Center for Democracy & Technology. But it wasn't clear whether the FCC intended to address the issue in its broadband plan.

The decision to address privacy at all could prove controversial. Earlier this year, the Interactive Advertising Bureau had asked the FCC to refrain from considering online privacy in the broadband plan. The IAB argued that Congress tasked the FCC to formulate a broadband plan as part of a stimulus bill that "makes no mention of privacy" and was aimed at "furthering the build out of a high-speed broadband infrastructure across the country."

Now that the FCC is issuing privacy recommendations, early indications are that the commission might have incorporated standards that are fast becoming outdated.

For instance, the summary focused on a notice-and-choice regime for the collection of "personal information." But Jules Polonetsky, co-chairman and director of the think tank Future of Privacy Forum, says that policymakers seem to be shifting away from the notice-and-choice

framework—at least when it involves providing notice and an opportunity to opt out of targeting in lengthy, legalese-filled privacy policies. "Progressive thinkers in government are laying the groundwork to evolve beyond that mode of thinking," he said.

Daniel Weitzner, a policy official at the Commerce Department's National Telecommunications and Information Administration, has said that "There are essentially no defenders anymore of the pure notice-and-choice model."

In addition, the FCC's executive summary focused on personal information, but there's currently a great deal of disagreement about what that term means. Ad industry executives have often defined "personally identifiable information" as name, address, email address or phone number, but consumer advocates and policymakers have been pressuring for more expansive definitions. They argue that people can be identified based on even so-called anonymous data if enough of it is collected. Search queries alone can be used to identify people, as happened after AOL released three months' worth of such queries.

Last year, the Federal Trade Commission said that even non-personally identifiable information could be used to identify specific users. "Technology has rendered the conventional definition of personally identifiable information obsolete," said Maneesha Mital, associate director of the Federal Trade Commission's privacy division. "You can find out who an individual is without it."

The broadband plan also will include recommendations aimed at improving competition. Among other suggestions, the FCC will recommend "comprehensive review of wholesale competition rules to help ensure competition in fixed and mobile broadband services," as well as rules requiring increased transparency in performance. In addition, the FCC also will ask broadcasters to give back spectrum that can be used for wireless computing. Reported in: media-post.com, March 15. □

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online privacy vanishing?

Computer scientists and policy experts say that seemingly innocuous bits of self-revelation found on such sites as Facebook or Twitter can increasingly be collected and reassembled by computers to help create a picture of a person's identity, sometimes down to the Social Security number.

In a class project at the Massachusetts Institute of Technology that received some attention last year, Carter Jernigan and Behram Mistree analyzed more than 4,000 Facebook profiles of students, including links to friends who said they were gay. The pair was able to predict, with 78 percent accuracy, whether a profile belonged to a gay male.

So far, this type of powerful data mining, which relies on sophisticated statistical correlations, is mostly in the realm of university researchers, not identity thieves and marketers.

But the Federal Trade Commission is worried that rules to protect privacy have not kept up with technology. Its concerns are hardly far-fetched. Last fall, Netflix awarded \$1 million to a team of statisticians and computer scientists who won a three-year contest to analyze the movie rental history of 500,000 subscribers and improve the predictive accuracy of Netflix's recommendation software by at least 10 percent.

On March 12, Netflix said that it was shelving plans for a second contest—bowing to privacy concerns raised by the FTC and a private litigant. In 2008, a pair of researchers at the University of Texas showed that the customer data released for that first contest, despite being stripped of names and other direct identifying information, could often be “de-anonymized” by statistically analyzing an individual's distinctive pattern of movie ratings and recommendations.

In social networks, people can increase their defenses against identification by adopting tight privacy controls on information in personal profiles. Yet an individual's actions, researchers say, are rarely enough to protect privacy in the interconnected world of the Internet.

You may not disclose personal information, but your online friends and colleagues may do it for you, referring to your school or employer, gender, location and interests. Patterns of social communication, researchers say, are revealing.

“Personal privacy is no longer an individual thing,” said Harold Abelson, the computer science professor at MIT. “In today's online world, what your mother told you is true, only more so: people really can judge you by your friends.”

Collected together, the pool of information about each individual can form a distinctive “social signature,” researchers say.

The power of computers to identify people from social patterns alone was demonstrated last year in a study by

the same pair of researchers who cracked Netflix's anonymous database: Vitaly Shmatikov, an associate professor of computer science at the University of Texas, and Arvind Narayanan, now a researcher at Stanford University.

By examining correlations between various online accounts, the scientists showed that they could identify more than 30 percent of the users of both Twitter, the microblogging service, and Flickr, an online photo-sharing service, even though the accounts had been stripped of identifying information such as account names and e-mail addresses.

“When you link these large data sets together, a small slice of our behavior and the structure of our social networks can be identifying,” Mr. Shmatikov said.

Even more unnerving to privacy advocates is the work of two researchers from Carnegie Mellon University. In a paper published last year, Alessandro Acquisti and Ralph Gross reported that they could accurately predict the full, nine-digit Social Security numbers for 8.5 percent of the people born in the United States between 1989 and 2003—nearly five million individuals.

Social Security numbers are prized by identity thieves because they are used both as identifiers and to authenticate banking, credit card and other transactions.

The Carnegie Mellon researchers used publicly available information from many sources, including profiles on social networks, to narrow their search for two pieces of data crucial to identifying people—birthdates and city or state of birth.

That helped them figure out the first three digits of each Social Security number, which the government had assigned by location. The remaining six digits had been assigned through methods the government didn't disclose, although they were related to when the person applied for the number. The researchers used projections about those applications as well as other public data, such as the Social Security numbers of dead people, and then ran repeated cycles of statistical correlation and inference to partly re-engineer the government's number-assignment system.

To be sure, the work by Acquisti and Gross suggests a potential, not actual, risk. But unpublished research by them explores how criminals could use similar techniques for large-scale identity-theft schemes.

More generally, privacy advocates worry that the new frontiers of data collection, brokering and mining, are largely unregulated. They fear “online redlining,” where products and services are offered to some consumers and not others based on statistical inferences and predictions about individuals and their behavior.

The FTC and Congress are weighing steps like tighter industry requirements and the creation of a “do not track” list, similar to the federal “do not call” list, to stop online monitoring.

But Jon Kleinberg, a professor of computer science at Cornell University who studies social networks, is skeptical

that rules will have much impact. His advice: "When you're doing stuff online, you should behave as if you're doing it in public—because increasingly, it is." Reported in: *New York Times*, March 16. □

technology coalition seeks stronger privacy laws

A broad coalition of technology companies, including AT&T, Google and Microsoft, and advocacy groups from across the political spectrum said March 29 that it would push Congress to strengthen online privacy laws to protect private digital information from government access.

The group, calling itself the Digital Due Process coalition, said it wanted to ensure that as millions of people moved private documents from their filing cabinets and personal computers to the Web, those documents remained protected from easy access by law enforcement and other government authorities.

The coalition, which includes the American Civil Liberties Union, the Electronic Frontier Foundation and the Center for Democracy and Technology, wants law-enforcement agencies to use a search warrant approved by a judge or a magistrate rather than rely on a simple subpoena from a prosecutor to obtain a citizen's online data.

The group also said that it wanted to safeguard location-based information collected by cellphone companies and applications providers.

The group said that it would lobby Congress for an update to the current law, the Electronic Communications Privacy Act, which was written in 1986, nearly a decade before the use of the Internet became mainstream.

Under a proposed set of principles, law-enforcement agencies or other government representatives would have to obtain a search warrant based on a showing of probable cause before they could access a person's e-mail, photos or other electronic documents stored in a "cloud based" service such as Gmail, Flickr or Facebook. Under current law, much of that information is accessible through a simple subpoena, which does not require oversight of a court.

Obtaining access to information about where people are located would be protected under the same standard. Currently, courts are divided on whether access to location information requires a warrant or a subpoena.

Advocates of the changes said that the new rules were merely intended to ensure that protections that Americans have enjoyed in the past remain in place as technology evolves.

"The U.S. Constitution protects data in your home and on your PC very strongly," said Mike Hintze, an associate general counsel at Microsoft. "We don't believe that the balance between privacy and law enforcement should be

fundamentally turned on its head," Mr. Hintze said, simply because people now choose to store documents online rather than in their homes.

Members of the coalition acknowledged they would probably face resistance from law-enforcement agencies and said they expected a long debate before Congress agreed to change the law.

"We are not expecting that these will be enacted this year," said Jim Dempsey, vice president for public policy at the Center for Democracy and Technology. "But it is time to begin the dialog."

Senator Patrick J. Leahy (D-VT) said that he welcomed the work of the coalition and planned to hold hearings on the issue. "While the question of how best to balance privacy and security in the 21st century has no simple answer, what is clear is that our federal electronic privacy laws are woefully outdated," he said in a statement.

The coalition said that the new principles would not affect the access of private digital information for national security purposes. And they would not affect the use of personal information for commercial purposes, like marketing, a mounting source of concern among users. Reported in: *New York Times*, March 30. □

Google shuts China site in dispute over censorship

Just over two months after threatening to leave China because of censorship and intrusions from hackers, Google on March 22 closed its Internet search service there and began directing users in that country to its uncensored search engine in Hong Kong.

While the decision to route mainland Chinese users to Hong Kong was an attempt by Google to skirt censorship requirements without running afoul of Chinese laws, it appeared to have angered officials in China, setting the stage for a possible escalation of the conflict, which may include blocking the Hong Kong search service in mainland China.

The state-controlled Xinhua news agency quoted an unnamed official with the State Council Information Office describing Google's move as "totally wrong."

"Google has violated its written promise it made when entering the Chinese market by stopping filtering its searching service and blaming China in insinuation for alleged hacker attacks," the official said.

The Chinese Foreign Ministry said that the government will handle the Google case "according to the law." The ministry spokesman, Qin Gang, said at a regular briefing in Beijing that Google's move was an isolated act by a commercial company, and that it should not affect China-U.S. ties "unless politicized" by others.

Google declined to comment on its talks with Chinese authorities, but said that it was under the impression that its move would be seen as a viable compromise.

"We got reasonable indications that this was OK," Sergey Brin, a Google founder and its president of technology, said. "We can't be completely confident."

Google's retreat from China, for now, is only partial. In a blog post, Google said it would retain much of its existing operations in China, including its research and development team and its local sales force. While the China search engine, google.cn, has stopped working, Google will continue to operate online maps and music services in China.

Google's move represents a powerful rejection of Beijing's censorship but also a risky ploy in which Google, a global technology powerhouse, will essentially turn its back on the world's largest Internet market, with nearly 400 million Web users.

"Figuring out how to make good on our promise to stop censoring search on google.cn has been hard," David Drummond, Google's chief legal officer, wrote in the blog post. "The Chinese government has been crystal clear throughout our discussions that self-censorship is a non-negotiable legal requirement."

Drummond said that Google's search engine based in Hong Kong would provide mainland users results in the simplified Chinese characters used on the mainland and that he believed it was "entirely legal."

"We very much hope that the Chinese government respects our decision," Drummond said, "though we are well aware that it could at any time block access to our services." Some Western analysts say Chinese regulators could retaliate against Google by blocking its Hong Kong or American search engines entirely, just as it blocks YouTube, Facebook and Twitter.

Google's decision to scale back operations in China ended a nearly four-year bet that Google's search engine in China, even if censored, would help bring more information to Chinese citizens and loosen the government's controls on the Web.

Instead, specialists say, Chinese authorities have tightened their grip on the Internet in recent years. In January, Google said it would no longer cooperate with government censors after hackers based in China stole some of the company's source code and even broke into the Gmail accounts of Chinese human rights advocates.

"It is certainly a historic moment," said Xiao Qiang of the China Internet project at the University of California, Berkeley. "The Internet was seen as a catalyst for China being more integrated into the world. The fact that Google cannot exist in China clearly indicates that China's path as a rising power is going in a direction different from what the world expected and what many Chinese were hoping for."

While other multinational companies are not expected to follow suit, some Western executives say Google's decision is a symbol of a worsening business climate in China

for foreign corporations and perhaps an indication that the Chinese government is favoring home-grown companies. Despite its size and reputation for innovation, Google trails its main Chinese rival, Baidu.com, which was modeled on Google, with 33 percent market share to Baidu's 63 percent.

The decision to shut down google.cn will have a limited financial impact on Google, which is based in Mountain View, California. China accounted for a small fraction of Google's \$23.6 billion in global revenue last year. Ads that once appeared on google.cn will now appear on Google's Hong Kong site. Still, abandoning a direct presence in the largest Internet search market in the world could have long-term repercussions and thwart Google's global ambitions, analysts say.

Government officials in Beijing have sharpened their attacks on Google in recent weeks. China experts say it may be some time before the confrontation is resolved.

"This has become a war of ideas between the American company moralizing about Internet censorship and the Chinese government having its own views on the matter," said Emily Parker, a senior fellow at the Center on U.S.-China Relations at the Asia Society.

In China, many students and professionals said they feared they were about to lose access to Google's vast resources. In January, when Google first threatened to leave China, many young people placed wreaths at the company headquarters in Beijing as a sign of mourning.

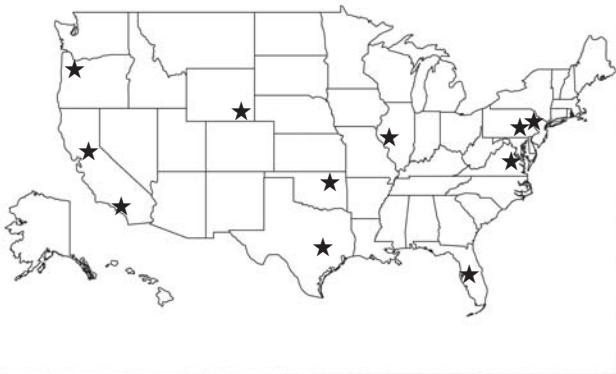
The attacks were aimed at Google and more than thirty other American companies. While Google did not say the attacks were sponsored by the government, the company said it had enough information about the attacks to justify its threat to leave China.

People, inside and outside of Google, investigating the attacks have since traced them to two universities in China: Shanghai Jiao Tong University and Lanxiang Vocational School. The schools and the government have denied any involvement.

After serving Chinese users through its search engine based in the United States, Google decided to enter the Chinese market in 2006 with a local search engine under an arrangement with the government that required it to purge search results on banned topics. But since then, Google has struggled to comply with Chinese censorship rules and failed to gain significant market share from Baidu.com.

Google is not the first American Internet company to stumble in China. Nearly every major American brand has arrived with high hopes only to be stymied by government rules or fierce competition from Chinese rivals. After struggling to compete, Yahoo sold its Chinese operations to Alibaba Group, a local company; eBay and Amazon never gained traction; and Microsoft's MSN instant messaging service badly trails that of Tencent. Reported in: *New York Times*, March 22. □

censorship dateline



libraries

Huntington Beach, California

A Huntington Beach school board member is asking for tighter controls of a Maya Angelou autobiography that was the center of controversy at Ocean View School District last year. However, district officials said the book is already tightly monitored.

Trustee John Briscoe wrote a letter to the editor that was printed in the *Huntington Beach Independent* March 18 that said "there is no need or place" for children to read the best-seller *I Know Why the Caged Bird Sings*. He is asking that the district require written parent permission for students to check out the book from private classroom libraries.

District officials decided in November 2009 to require parental consent to check out the book from the school's main library.

Superintendent Alan Rasmussen wrote Briscoe a letter the day after the editorial was published saying he resented Briscoe misstating the facts and not coming to the district personally with his concerns.

"I am dismayed, disheartened, and disappointed that you feel obligated to mislead our community with false statement," Rasmussen wrote. "Through your disregard for factual, documented history, you publicly sullied the reputation of Ocean View School District, administration, and teachers."

Rasmussen said the book is not in private classroom libraries. The book has been at Vista View and Spring View middle schools' main libraries since 1995 and had been checked out about five times.

"The principals were notified and they notified their staff that this book is not to be given out and if kids want to read it, (the student) has to have parental permission," he said.

During an October 2009 school board meeting, a Westminster resident read a rape scene of an 8-year-old girl from the book. The district's instructional material review committee then reviewed the book and Rasmussen added a restriction the next month that parents must provide consent for students to check out the book.

Angelou's book was the third most challenged book in schools during the 1990s, according to the American Library Association. The book was nominated for a National Book Award in 1970.

Briscoe contends that students still have access to the book in classroom libraries. "Are these tops for free-range reading right off the library shelf in our elementary and middle schools?" he wrote. "Enough other good books exist that we don't need to over-sex our children more than they already are."

"The tentative first step taken by Ocean View to require a wink or head nod of parental approval is just that, a first step," he wrote.

Briscoe said he didn't go to Rasmussen with his concerns because he didn't believe the district had "much interest" in the issue anymore. He also said his March 18 editorial was in response to an *Independent* editorial published in February about the book.

School board member Debbie Cotton also sent a personal e-mail after she received "many" comments and concerns about his editorial. She wrote that she was offended by his reference that she "feigned shock and dismay" when the rape scene was read from the book in October.

"Although there are some tough subjects in this book, I believe that banning books requires the utmost care and it is a last resort," she wrote. "This is a First Amendment issue and that takes precedence over someone's preference." Reported in: *Orange County Register*, March 25.

Hillsborough County, Florida

Several months ago, two concerned parents emailed the principal of Plant High School, challenging a book listed as suggested reading in a class where juniors and seniors earn college credit. One of them said his daughter, a junior, is now forever changed because she read *Running with Scissors*, by Augusten Burroughs.

"My child has been robbed of some of the innocence of her childhood," he wrote, "and this can not (sic) be undone."

After a school board member and district employee joined the parents as complainants, they asked each school to remove the book from library circulation and the card catalog.

This alarmed Christine Van Brunt, supervisor of library

media services for the district. In one email, she wrote, "District procedures require that books go through the district's challenge process before being removed permanently from school media center collections. The challenge process should be completed for this book, so a precedent is not set for removing books without following district procedures. Removing books without following this process could open the door to removing books on a personal and subjective basis rather than by a set of standards."

Within a few weeks, nine panels convened and voted on a solution. Then the media specialists met to present their final report. Four high schools—Plant, Middleton, Hillsborough, and Bloomingdale—voted to keep the book and place a "Mature Reader" label on the front cover. Three high schools—Sickles, Robinson, and Lennard—will require parental consent. Gaither High School and Riverview High School voted to ban the book.

Running with Scissors is a memoir detailing the author's teenage years. Augusten Burroughs writes about when he was abandoned by disturbed parents to be raised in a strange psychiatrist's home without rules or boundaries. Burroughs details his own homosexuality and the usual growing pains, in addition to horrific experiences at the hands of grownups who should have known better.

"There are no good guys in this book," said Jill Driver from Riverview, outlining her panel's concerns. "There's a corrupt doctor. No one at the boy's school, no grownup at all, helped this child. So we felt there was no reason to keep the book."

A few seconds of silence filled the meeting room.

"That's exactly why we wanted to keep the book," said Paula Marcynski from Robinson High. "Why didn't someone pick up on this? There were so many warning signs. Kids and teachers would have good discussions in different kinds of classes, even psychology classes."

The final report from Riverview goes further.

"This book has extremely inappropriate content for a high school media center collection. The book contained explicit homosexual and heterosexual situations, profanity, underage drinking and smoking, extreme moral shortcomings, child molesters, graphic pedophile situations and total lack of negative consequences throughout the book."

Heather Thomas, from Sickles High, brought in a letter from a student who was disappointed that anyone would ban the book and blamed intolerance of homosexuality as the real reason for censorship.

Van Brunt, on several occasions, mentioned that the teachers and administrators must respect the rights of parents. "The school district works with parents," she said, time and again.

The report detailing each school's response will go to the original complainants. If they are unsatisfied, then the entire school board must make the final decision.

Now that the panels' work is finished, *Running with Scissors* will be returned to the shelves and "fast-added"

back to the catalog at all the affected high schools, except Gaither and Riverview. Reported in: *The Daily Loaf*, March 26.

schools

Jacksonville, Illinois

A 1966 novel by celebrated black poet Margaret Walker about the coming of age of a biracial slave girl in Civil War times is facing a third review of whether it belongs in school and is prompting a larger discussion about the role of diversity in the district.

The book *Jubilee* is a fictionalized story about the life of Walker's grandmother, who was born as a slave in Georgia. Walker is said to have spent more than twenty years working to ensure the details in the story were historically accurate.

But Samuel Holmes, pastor of Community Temple, said he found it an "offensive" and "trashy" novel about the way of life in the Old South. He wants it removed from the shelves of Jacksonville High School.

Neither District 117 Superintendent Les Huddle nor Jacksonville High School Principal Mike McGiles has read the book, but Huddle said he plans to and McGiles has read synopses and reviews. The book has been challenged twice in the 18 years English teacher Michele Rush has taught. The book is part of the junior-year curriculum.

"I'm passionate about this book because, of all the novels I teach, it has the best reaction from the students," Rush said.

In the past, once every four or five years, some parents feel uncomfortable with the book's content and asked if the student could read something else, Rush said. "Most of the time it's a well-received book," Rush said. "The students like it and learn a lot."

Holmes disagrees. "It has no value to white or black people," he said. "We believe it is to promote superiority for white people and to step on black people and make them feel inferior."

The story recounts the life of a slave girl and how she overcomes the adversity and challenges she faces and finds freedom and a sense of who she is, Rush said. "My kids are always cheering for her at the end," Rush said. "They can't believe she's able to beat the odds and overcome all this adversity thrust on her."

The message Holmes took from the book was that "that's the way it was."

Rush said some students are shocked and troubled by the treatment of the characters in the book. "What I hope that the students get from this is a sense of what it was like for people during this period of time, especially African-Americans," Rush said. "It's a celebration of a young woman who is able to overcome what seems like unbeatable odds and make a life for herself."

Though the book may have gritty parts, Rush wants her students to understand the importance of not ignoring such events but reflecting on them and making sure not to repeat them. “We can probably take a portion out of every book we read in the high school level and find one thing that’s offensive about it,” Rush said.

Holmes believes the book is one facet of a deeper problem. “We live in a community that has always done things a certain way,” Holmes said. “They have no consciousness of why we feel that way. They don’t feel the tension or the pain. We need to see more diversity.”

Jackie Rogers, administrative assistant at the Lafayette Center, has been discussing the need for more diversity within the school district for the past seven or eight years. “You can keep your foot on the head of a person so long before they get tired of it and that’s how this black community feels. We’re tired of it and it’s left up to us to do something about it,” Rogers said.

The district intends to generate conversations regarding diversity, Huddle said. “Do we have a diverse staff? No. Is it something we’ve talked about? Yes,” Huddle said. “Is it an easy answer? No.”

Diversity is not just one of race or ethnicity, Huddle said, and it covers a multitude of things, including gender. Bringing diversity into the district will take a community effort to recruit quality teachers and people, Huddle said.

“The easiest thing is to walk away and do nothing,” Huddle said. “That’s what we’re not going to do.”

About 7 percent of the Jacksonville population is black and about 5.6 percent of the population of Morgan County, according to 2008 Census estimates. Reported in: *Jacksonville Journal-Courier*, February 19.

Salem, Oregon

Laura Nevel grew concerned when her 10-year-old daughter asked her about a white powdery drug. Echeo, a fifth-grader at Auburn Elementary School, explained that they were reading the book *The Dead Man in Indian Creek* out loud in class. A passage in the book described a white powdery substance, and “everyone yelled out: ‘It’s cocaine,’” Echeo said. Not knowing what it was, she asked her mother about it.

After reading the book, the Nevel family says it is not appropriate for elementary students because of the drugs and drug smuggling activities in the book. They want the Salem-Keizer School District to take the book out of elementary schools, which could prompt a reconsideration of the book’s availability. It is now in elementary and middle schools throughout the district.

“I don’t believe a 10-year-old should be graphically discussing drug trafficking and cocaine,” Laura said. “As parents, we have a right to question what they’re telling our kids and have a say in what they’re teaching our children.”

Written by Mary Downing Hahn, *The Dead Man in*

Indian Creek is a mystery about two junior high boys who find a murdered man. They investigate on their own, eventually uncovering that one of the boy’s mothers and her boyfriend are part of a drug-packaging ring in which cocaine is stuffed into the hollow heads of dolls. After a series of events that put them face-to-face with a drug ringleader, the boys successfully involve the police. The boy’s mother goes to jail.

The book was chosen for a language arts lesson in Echeo’s fifth grade class at Auburn. Her teacher read out loud 10–15 minutes, then had students discuss things such as the main ideas of the book or character development, said Don Hakala, assistant principal at Auburn.

“The kids didn’t really talk a lot about the drug-use piece; that didn’t become a major theme of discussion,” Hakala said. “It was brought up that what was going on [in the book] was wrong and against the law. Those people end up getting arrested in the book. There were consequences.”

The book is rated by the district as level 5.9, or upper fifth grade, said Steve Cox, a library media program specialist in Salem-Keizer. The district rates books based on readability and content; district staffers look at readability measures and educational reviews, and also try to read the books, which is not always possible because of the quantity of books in school libraries.

Cox recently read *The Dead Man in Indian Creek* and said, in his opinion, the content was appropriate for upper elementary and middle school students.

It’s not the first time the book has caused concern locally. In 1994 it was challenged in Salem-Keizer schools because of graphic violence, examples of inappropriate parenting and because it was too frightening for elementary students, according to a list of challenged books from the American Civil Liberties Union of Oregon. The district retained the book, however, and about 58 copies are in elementary and middle schools libraries throughout the district, and more are likely in classroom libraries, Cox said.

The Dead Man In Indian Creek has won awards from the International Reading Association, the Children’s Book Council and the American Library Association.

Among the concerns the Nevel family has is that *The Dead Man in Indian Creek* was presented to Auburn students without drug-prevention curriculum, and apparently the book prompted students to talk amongst themselves about drugs.

“All the kids started talking about the drug,” Echeo said. “Once it’s talked about, it just becomes cool.” Then students started telling each other stories about drugs—including one who said she found cocaine on the way to school. Some stories seemed true, but others seemed made up, she said.

“It seemed to become a cool thing after it was read in the book,” Echeo said.

Hakala said the school was not aware that students were talking about drugs in that fashion. “If I had heard that concern, that students were glorifying it or sharing stories,

we would have dealt with it right away," he said. "If the teacher had heard anything like that, we would have dealt with it. . . . That wasn't going on at school, or at least we were unaware of it."

The Nevel family thinks there is a difference between the book's reading level and content: That it's written for a fifth grader, but deals with a subject more appropriate for older students. Although they feel the book needs appropriate drug-prevention curriculum when taught in schools, there is no guarantee that would happen, said Aaron, Echeo's father.

The family submitted a complaint form to the school district, he said. They want the book taken out of elementary schools. "This is grade school," he said. "I feel it's not appropriate . . . For sixth, seventh, eighth grade I can understand."

Because the book went through a review process in 1994—a committee reads and reviews it, then presents a report to the school board—it's not clear whether the district would go through the review a second time. Cox said that would probably be determined on a case-by-case basis by a top administrator. Reported in: *Salem Statesman-Journal*, March 4.

Council Rock, Pennsylvania

When it comes to letting teenagers see adult-themed movies, Council Rock administrators believe they're taking every precaution and giving parents the ultimate say. But Upper Makefield mom Diana Nolan thinks the school district still is missing the most important step—not offering the adult materials in the first place.

Like several other school districts in Bucks and Montgomery counties, Council Rock allows some R-rated features, or clips, to be used in high school classes, including social studies and literature courses, on related topics, officials said.

Although the district requires parental permission for students to view the R-rated material, Nolan said kids who aren't allowed to watch feel embarrassed and left out. That's why she and several other parents confronted the Council Rock school board, demanding that R-rated movies be removed as curriculum options.

Nolan's plight began a few years ago when she was asked to let her son, then a sophomore, watch *The Merchant of Venice* in his English class. Since the film included nude scenes, she said no. Her son said he'd forge the permission slip next time.

"I want to raise my son to be a gentleman and that's far more important than watching a movie in a classroom," said Nolan. "It puts me in an awkward position. It's not fair. I have no objection to showing Shakespeare, classic ones, but that's just one of the movies that are a little bit too much for our kids to see."

The other "inappropriate" scenes and films offered to

some English and social studies classes, Nolan discovered, include bare-chested women in *Elizabeth*, and bloody fighting in *V for Vendetta* and *We Were Soldiers*.

Pupils studying existentialism are shown *Garden State* and *Waking Life*, which both depict drinking, sex, suicide and drugs. In Eleventh-grade English classes reading *Death of a Salesman*, *Glengarry Glen Ross* is viewed and has extremely foul language repeated multiple times.

A few of the movies Nolan has a problem with, such as *Crash*, are offered only to seniors taking a course on human sexuality, which requires parental permission to participate. Others, including *O*, have been removed, said Joy McClendon, director of elementary education and curriculum services.

She gives Nolan credit for bringing the district's attention to the issue, which has helped administrators make sure teachers are following the process. Teachers must get the OK from their principal and curriculum coordinator and signed consent from parents, McClendon said.

But many of the films, including *Glory*, *Saving Private Ryan*, and *Cold Mountain*, are rated R for violence and are used only for clips of battle scenes. Educators have tried to use PG versions of films they taped from home, but that posed copyright problems. Most educators will fast-forward past any nudity, said McClendon.

The movies help kids understand more by grabbing their attention. Plus, parents who don't approve have the option of an alternate assignment. Students not allowed to watch the film aren't asked to leave. They report directly to the library instead of their classroom, she said.

"The world kids are now being educated in is very different from the 1960s/70s," McClendon said. "The educational value is worth more than violence or brief nudity."

"These clips are used to connect specifically with a topic, to make a connection for students and to generate active discussion, writing or debate within the confines of the curriculum," she said. "They add significantly to the courses in which they are used. Most of the scenes used do not contain what most people would consider to be R-rated content."

The films aren't trash, but critically acclaimed and award-winning movies, said Council Rock Superintendent Mark Klein.

"When our staff stands up and supports the important curricular connections that these films make in a high school program that recognizes the important component of visual literacy, it seems very dangerous to me to allow eight parents to come forward and demand the removal of this content," he said.

Both Klein and board member Jerold S. Grupp have expressed concerns over censorship, something Grupp said he won't support or entertain. "Choosing to ban them all would be like banning the artwork of Michelangelo or Rembrandt," said Grupp.

But Nolan said she's not stopping until they do. "It

sends the wrong message to our children," she said. "You're showing our kids there are drugs without consequences. They should be safe in school. If [students are] removed, you're depriving them a right to education. I'm paying for them to be taught, not singled out." Reported in: phillyburbs.com, January 12.

Easton, Pennsylvania

For the first time in fifteen years, someone has formally challenged the use of a book in the Easton Area School District curriculum. Eric Adams, a Lower Saucon Township resident and Easton Area High School graduate, said the book *Nickel and Dimed* contains objectionable material and advocates a specific political agenda with a decidedly socialist bent.

"Left, right or independent, can't we at least agree that the public school system is no place for political activism of any kind?" Adams said.

Adams said the book promotes "economic fallacies" and socialist ideas, as well as advocating the use of illegal drugs and belittling Christians.

The 2001 book is a nonfiction account by Barbara Ehrenreich, who sustained herself as a low-skilled worker for more than a year in an investigation of the impact welfare reform has on the poor. The book is used as part of an 11th-grade Advanced Placement English class.

A committee of seven teachers and four administrators met in December to review Adams' complaint, but found the use of the book was appropriate and could be used elsewhere in the district's curriculum.

The book is not being used to teach specific opinions or political beliefs, but rather to study the author's tone, and encourage critical and independent thinking among students, school officials said.

"We read books like this to spark debate, get kids thinking about what they actually believe in, and stand up and defend it," Director of Teaching and Learning Steve Furst said. "That's really what this is about, trying to reinforce our democratic principles."

Adams has written to the Easton Area School Board, which has the option of overturning the committee's decision in a two-thirds majority vote. So far, the board has not discussed the request during any board meetings.

Adams does not have children in the school district, but said he felt entitled to file a complaint as a graduate and Pennsylvania taxpayer. Reported in: *Lehigh Valley News*, February 21.

Culpeper County, Virginia

The Culpeper County school superintendent said February 1 that the school system had never formally removed a version of Anne Frank's diary from classrooms following a parental complaint that some passages were

objectionable (see *Newsletter*, March 2010, p. 57).

Director of Instruction James Allen had announced that the diary would not be used in the future and that the decision was made quickly, without adhering to a formal review policy for instructional materials that prompt complaints. The remarks set off a hailstorm of criticism online and brought international attention to the 7,600-student school system in rural Virginia.

Superintendent Bobbi Johnson said, however, that the book will remain a part of English classes, although it may be taught at a different grade level. Johnson will convene a committee of English teachers and curriculum specialists to review the diary along with scores of other books to develop a reading list for middle and high school English classes that teachers can use and that parents can review before school starts.

"This is not intended to censor or limit," Johnson said. "This has brought to light the fact that we need to be taking a look at what we are reading," she said.

Anne Frank's diary is one of the most enduring portraits of the horrors of the Nazi regime. It documents the daily life of a Jewish girl who lived in hiding with her family in Amsterdam for two years.

The Diary of a Young Girl: The Definitive Edition, which was published on the 50th anniversary of Frank's death in a concentration camp, includes passages that were edited from the original version, first published in 1947. Some of the new passages detail Frank's emerging sexual desires.

A Culpeper mother of an eighth-grader at Floyd T. Binns Middle School became concerned about an entry in which Frank describes having erotic feelings for another girl and another in which she describes what her vagina looks like, Johnson said. The mother did not want the book removed, she said. She was asking that her daughter not be required to read the book aloud, as the class had been doing.

Johnson said she reviewed e-mails among the parent, the middle-school principal and director of administrative services Russell Houck in late November and early December after the concern was first registered and found "no evidence . . . that anyone ever asked that the book be removed." She said that Allen and some teachers were misinformed about whether there had been such a request. Reported in: *Washington Post*, February 2.

colleges and universities

Merced, California

More than a week after the opening of the University of California at Merced's fifth annual Bobcat Family Art Show one student's piece of art was AWOL. Irene Tang's multimedia piece, "Spell," was missing from the row of artwork in the UC Merced library.

The 19-year-old economics major was one of about fifty students and community members to submit work to

the show's organizers by the February 10 deadline. Tang expected to see "Spell" at the show's Feb. 15 opening. But it wasn't there.

Later that week, after meeting with Jane Lawrence, vice chancellor for Student Affairs, and Charles Nies, associate vice chancellor of Student Affairs, Tang learned that her art wouldn't be included because they felt it was distasteful and disrespectful to the chancellor.

The artwork in question was a series of seven photographs of Chancellor Steve Kang talking into a microphone behind a lectern. In each photograph, the artist placed a name tag on Kang's lapel with part of the chorus of pop singer Lady Gaga's song, "Bad Romance." The seventh photograph is what stirred the controversy among administrators, according to Tang. In that photo, Tang decorated Kang with a pink bow tie and silver sunglasses. Tang also placed a condom over the microphone that Kang was speaking into.

According to Patti Istanas, a spokeswoman for UC Merced, the show was family-oriented. Lawrence objected to Tang's project because she felt it was distasteful and inappropriate for young children.

"As we discussed, we would be very pleased to include in the UC Merced Family Art Show the six photographs of the Chancellor that capture him speaking to a group," Lawrence said in her e-mail to Tang. "We are not comfortable with allowing the seventh picture to be part of the Family Art Show."

"Our Principles of Community uphold the values of fairness, respect, diversity and civil and respectful expressions of individual belief and opinions," Lawrence added. "We believe that we are not showing respect for our Chancellor if he is presented in such a way."

The other objection to having Tang's piece included in the show was that her image could be construed as sexually explicit by some of the parents of young children, Lawrence said in the e-mail.

Tang said that not allowing her artwork in the show violated the school's rules of community. Submitting "Spell" without the seventh photo would compromise her artwork, Tang said, and she refused to comply with their demands.

Since the show is in the library and not in a gallery, it's hard for people to navigate away from an object some people could find objectionable, Istanas said.

Tang's artwork is in custody of the school, and Tang said she was unclear when she would get it back. When she created the image, Tang said she wasn't trying to be offensive. The project was about the formation of identity and how college students are deciding who they want to be.

"This is just a dedication to people who are trying to find direction and find their own way," Tang said. "It also reflects that the school is young and can take any direction." The condom symbolized how Kang sometimes has to censor himself to protect his private identity, Tang explained.

The show's founder, Gail Benedict, said she saw Tang's

piece first and felt she should show it to the chancellor before it went into the show. The chancellor asked other faculty members their advice on whether to show Tang's images. "I said the piece should go up," Benedict said.

Unless the artwork was clearly outrageous, then there was no reason why it shouldn't be presented, Benedict said.

If Tang's artwork still isn't allowed to be part of the show, Benedict said she would leave a space for Tang to make a written statement about her project at the show.

Tang also created a Facebook group documenting the incident called "Protest the Blocking of Art by Members of UC Merced's Administration." Reported in: *Merced Sun-Star*, February 23.

Laramie, Wyoming

The University of Wyoming has canceled a speech by former 1960s radical William Ayers after it raised hundreds of objections from citizens and politicians over the man who became an issue in the 2008 presidential campaign. In a statement released by the university, President Tom Buchanan supported the decision to cancel Ayers.

"The University of Wyoming is one of the few institutions remaining in today's environment that garner the confidence of the public. The visit by Professor Ayers would have adversely impacted that reputation," Buchanan said.

Ayers was scheduled to speak April 5 on the Laramie campus about social justice issues and education. The following day, he was to participate in a teleconference with Wyoming school principals. He was invited by the UW Social Justice Research Center, a privately endowed center that studies problems of oppression and inequalities among different social groups in society.

Having a scheduled appearance canceled is nothing new for Ayers. The University of Nebraska-Lincoln and Boston College canceled him in the past.

Ayers was a co-founder of Weather Underground, a radical anti-war group that claimed responsibility for a series of bombings, including explosions at the Pentagon and U.S. Capitol, that didn't kill anyone. He was a fugitive for years. After surrendering in 1980, charges against him were dropped because of prosecutorial misconduct.

During the 2008 presidential campaign, Republican Sen. John McCain's running mate, Alaska Gov. Sarah Palin, resurrected Ayers' radical past when she accused then-candidate Barack Obama of "palling around with terrorists." Obama and Ayers served together on the board of a Chicago charity, and Ayers hosted a meet-the-candidate session for Obama at his home in the mid-1990s when Obama first ran for office.

Obama has condemned Ayers' radical activities, and there's no evidence they ever were close friends or that Ayers advised Obama on policy.

UW spokesman Jim Kearns said the college had received

about 430 e-mails and phone calls since the appearance was announced, with the overwhelming majority against Ayers' visit. Several GOP gubernatorial candidates also voiced their opposition.

The university's statement said that the director of the Social Justice Research Center, Francisco Rios, made the decision to cancel Ayers and "apologized to the university community for any harm that may have come to it and cited personal and professional reasons, including safety concerns, for the cancellation."

Buchanan thanked the center for reconsidering its invitation to Ayers and said he was satisfied with the decision.

"Observers in and outside the university would be incorrect to conclude that UW simply caved in to external pressure," Buchanan said in the statement. "Rather, I commended the director of the center for a willingness to be sensitive to the outpouring of criticism, evaluate the arguments and reconsider the invitation."

Buchanan said academic freedom is a core principle of higher education, but with that comes a "commensurate dose of responsibility." Reported in: Associated Press, March 30.

prisons

Austin, Texas

Ask the Texas Department of Criminal Justice how many book and magazine titles it has reviewed over the years to determine if the reading material is suitable for its inmates, and officials will give you a precise number: 89,795. Ask how many authors are represented on the list, and they can tell you that, too: 40,285.

But ask how many of those books and magazines have been rejected because prison reviewers decided they contain inappropriate content, and prison officials will tell you that information is unavailable: "There's just no way to break that out," said Tammy Shelby, a program specialist for the prison agency's Mail System Coordinators Panel.

But after a newspaper reporter reviewed five years' worth of publications—about 5,000 titles—whose rejections were appealed by inmates to the agency's headquarters in Huntsville and obtained through open records requests, one thing is clear: Texas prisoners are missing out on some fine reading.

Novels by National Book Award winners Pete Dexter, Joyce Carol Oates, Annie Proulx and William T. Vollmann have been banned in recent years. Award finalists Katherine Dunn and Barry Hannah are on the Texas no-read list, too, as are Pulitzer Prize winners Alice Walker, Robert Penn Warren and John Updike.

Prisoners can't peruse certain books by Pablo Neruda and Andre Gide, both Nobel laureates. *Krik? Krak!* by Haitian writer Edwidge Danticat, who last year won a MacArthur "genius" grant, is prohibited behind Lone Star

bars. Books of paintings by some of the world's greatest artists—da Vinci, Picasso, Botticelli, Michelangelo—have been ordered out of state correctional facilities.

And just because a book is a best-seller in the free world doesn't mean it's available on the inside. Harold Robbins, Pat Conroy, Hunter S. Thompson, Dave Barry and James Patterson belong to the don't-read fraternity. Mystery writer Carl Hiaasen does, too, as do Kinky Friedman and Janet Fitch, whose *White Oleander* was an Oprah's Book Club selection.

John Grisham has had four blockbusters banned since 2005. And inmates will have to wait for parole before diving into *Precious*, the book by Sapphire that last year was turned into a critically acclaimed movie.

Political connections don't seem to count for much, either. Her father may have been governor and president, but Jenna Bush's *Ana's Story: A Journey of Hope* made the banned list in November 2008.

While it's easy to laugh off the removal of some books (comedian Jon Stewart's *America: A Citizen's Guide to Democracy Inaction* was censored for sexually explicit images), critics say the Texas Department of Criminal Justice's restrictions are a serious matter. Inmates who don't read, for example, have a harder time finding jobs, said Marc Levin, a criminal justice analyst for the Texas Public Policy Foundation.

"Literacy, or lack of it, is one of the biggest problems we have with respect to re-entry," Levin said. "Inmates who want to read should have that opportunity."

Texas prison officials said restrictions on reading material are for the good of both guards and inmates. "We have to protect the safety and security of our institution, but also aid in the rehabilitation of our offenders," said Jason Clark, an agency spokesman. "And what may not be judged inflammatory in the public at large can be inflammatory in prison."

While prisons for years have restricted reading material available to their inmates, experts in correctional policy concede there is scant research demonstrating that racy literature, dirty photos of tattoos or comics showing naked women—all prohibited in Texas lockups—stunt a prisoner's rehabilitation or cause disruptions.

"There is no evidence concluding that exposure to obscene material affects the morals or attitudes of prisoners," said Robert Bastress, a professor at the West Virginia University College of Law, who in 2004 represented an inmate who sued when the prison library was cleansed of all materials considered "a turn-on."

Texas inmates can receive published material only from publishers or bookstores. Each year, family members, friends and nonprofit organizations arrange to send thousands of books and magazines to prisoners. Common requests include dictionaries, pulp fiction—Westerns and Star Trek, in particular—and legal and health books, said Scott O'Dierro, who manages Austin-based Inside Books,

which has been sending the written word to Texas prisoners for eleven years.

When a book arrives at a Texas prison mailroom, an employee first checks the database to see if the book is already prohibited. If not, said Shelby, “he’ll flip it over and read the back.” If that provides insufficient information to make a decision, “they scan through it looking for key words” or pictures that would disqualify the publication.

“You can pretty much tell by reading the first few pages,” she said. “We rely on them to use their judgment.”

If the book is denied by a unit’s mailroom staff, an inmate can appeal to Huntsville headquarters. Prison officials say they don’t know what percentage of inmates choose to press their cases.

Review decisions are officially made by the six-member Directors Review Committee, which also considers matters of correspondence and visitation. But the committee generally turns its publication appeals over to two program specialists, Shelby and Jennifer Smith, who reconsider the mailroom decision.

Because of the sheer volume of books and magazines they receive, Smith said she typically reviews only the pages cited by mailroom staff as inappropriate. “We get too much up here to review every book” in its entirety, she said. If the women disagree with the mailroom, the book usually is redesignated as “approved.” Otherwise, it goes on the banned list for good unless a policy change merits a review.

Even critics agree that, on paper, the system is as good as any. “I’ve looked at a lot of policies,” said Paul Wright, editor of the Seattle-based *Prison Legal News*, which distributes the magazine and books to prisons nationwide. “And the Texas one, as written, isn’t that bad.”

But in practice, he added, many worthwhile books remain banned after a cursory exam simply because prisoners don’t appeal.

Last July, a prison censor rejected *The Narrative of Sojourner Truth*, a biography of the abolitionist, because of a racial reference. The decision was later reversed. But if the inmate hadn’t appealed, the title would have been permanently banned.

Even with appeals, Wright said, “there doesn’t seem to be any real review going on.” In 2005, mailroom staffers flagged *Freakonomics*, the best-selling popular economics book, for its use of a 50-year-old quote containing a racial epithet in a chapter about the Ku Klux Klan. That decision was upheld.

Scott Medlock, an attorney for the Texas Civil Rights Project, said such rubber-stamping stems from a Catch-22: Because the book is banned, the inmate can’t review its contents to prepare a rebuttal.

Federal prison policy, by contrast, states, “Where a publication is found unacceptable the warden shall permit the inmate an opportunity to review this material for purposes of filing an appeal.”

Perhaps the most common reason for diverting books

from Texas prisoners is sex, portrayed in images and words, although prison officials have struggled to define what’s permissible. Inmates could receive magazines like *Playboy* and *Penthouse* until 2004, when they were banned, Smith said.

A book or magazine also would be rejected if it “would encourage homosexual or deviant criminal sexual behavior.” In 2007, the “homosexual” reference was deleted, though not before it ensnared *Brokeback Mountain*, Proulx’s prize-winning love story about two cowboys. (*Homophobia: A History*, on the other hand, was approved in 2006.) Written descriptions of other sexual practices—sadomasochism, rape and incest—remain grounds for summary rejection.

State prison administrators have taken an even harder line with images. While pictures of naked buttocks are permitted, depictions of genitalia and women’s bare breasts are not. That applies not just to magazines such as *Hustler*, but also to offending swimsuit catalogs, tattoo images—even cartoons. The February 2009 *Esquire* was rejected for a line drawing of a woman in bed, a single naked breast visible over her sheet.

In the past five years, volumes on massage, home health care, circumcision, vintage aircraft nose art, gardening, Dungeons & Dragons and a pictorial history of restaurant menus were rejected for displaying too much explicit material.

Inmates enrolled in sex offender treatment programs, often for pedophilia, cannot receive any reading material except newspapers, religious material, and legal or educational publications. But a ban on images of nude children applies to everyone, Smith said.

Thus, *National Geographic* magazines are turned away for photos of naked toddlers. Images of unclothed children have also led to censorship of *Anatomica: The Complete Home Medical Reference* and *A Child is Born*, featuring primarily in-vitro photos.

Journalism is not immune, either. National Geographic’s massive *Visual History of the World* was banned because it included the Pulitzer Prize-winning photo of a naked girl fleeing a napalm attack in Vietnam. *Let Us Now Praise Famous Men*, James Agee’s photojournalistic account of U.S. sharecroppers, and *How the Other Half Lives*, Jacob Riis’s grim chronicle of New York slums at the turn of the century, were turned away for their pictures of unclothed children.

Art has proved especially tricky to regulate. Shelby said she tries to educate mailroom workers to keep their hands off books of paintings featuring naked adults. Yet many great works also display naked children, and books featuring the work of some of the world’s best-known artists, including Caravaggio and Rembrandt, have been blocked.

“Things that would be in the Vatican aren’t allowed in TDCJ,” said O’Dierno, who said his organization has used

(continued on page 133)

from the bench



U.S. Supreme Court

Ralph D. Fertig, a 79-year-old civil rights lawyer, says he would like to help a militant Kurdish group in Turkey find peaceful ways to achieve its goals. But he fears prosecution under a law banning even benign assistance to groups said to engage in terrorism.

The Supreme Court heard Fertig's challenge to the law February 22, in a case that pits First Amendment freedoms against the government's efforts to combat terrorism. The case represents the court's first encounter with the free speech and association rights of American citizens in the context of terrorism since the September 11 attacks—and its first chance to test the constitutionality of a provision of the USA PATRIOT Act.

Opponents of the law, which bans providing "material support" to terrorist organizations, say it violates American values in ways that would have made Senator Joseph R. McCarthy blush during the witch hunts of the cold war.

The government defends the law, under which it has secured many of its terrorism convictions in the last decade, as an important tool that takes account of the slippery nature of the nation's modern enemies.

The law takes a comprehensive approach to its ban on aid to terrorist groups, prohibiting not only providing cash, weapons and the like but also four more ambiguous sorts of help—"training," "personnel," "expert advice or assistance" and "service."

"Congress wants these organizations to be radioactive,"

Douglas N. Letter, a Justice Department lawyer, said in a 2007 appeals court argument in the case, referring to the dozens of groups that have been designated as foreign terrorist organizations by the State Department.

Letter said it would be a crime for a lawyer to file a friend-of-the-court brief on behalf of a designated organization in Fertig's case or "to be assisting terrorist organizations in making presentations to the U.N., to television, to a newspaper." It would be no excuse, Letter went on, "to be saying, 'I want to help them in a good way.'"

Fertig said he was saddened and mystified by the government's approach. "Violence? Terrorism?" he asked in an interview in his Los Angeles home. "Totally repudiate it. My mission would be to work with them on peaceful resolutions of their conflicts, to try to convince them to use nonviolent means of protest on the model of Mahatma Gandhi and Martin Luther King."

Fertig said his commitment to nonviolence was not abstract. "I had most of my ribs broken," he said, after his 1961 arrest in Selma, Alabama, for trying to integrate the interstate bus system as a freedom rider. He paused, correcting himself. "I believe all my ribs were broken," he said.

Fertig is president of the Humanitarian Law Project, a nonprofit group that has a long history of mediating international conflicts and promoting human rights. He and the project, along with a doctor and several other groups, sued to strike down the material-support law in 1998.

Two years earlier, passage of the Antiterrorism and Effective Death Penalty Act had made it a crime to provide "material support" to groups the State Department had designated as "foreign terrorist organizations." The definition of material support included "training" and "personnel." Later versions of the law, including amendments in the USA PATRIOT Act, added "expert advice or assistance" and "service."

In 1997, Secretary of State Madeleine K. Albright designated some thirty groups under the law, including Hamas, Hezbollah, the Khmer Rouge and the Kurdistan Workers' Party. The United States says the Kurdish group, sometimes called the P.K.K., has engaged in widespread terrorist activities, including bombings and kidnappings, and "has waged a violent insurgency that has claimed over 22,000 lives."

The litigation has bounced around in the lower courts for more than a decade as the law was amended and as it took on a central role in terrorism cases. Since 2001, the government says, it has prosecuted about 150 defendants for violating the material-support law, obtaining roughly 75 convictions.

The latest appeals court decision in Fertig's case, in 2007, ruled that the bans on training, service and some kinds of expert advice were unconstitutionally vague. But it upheld the bans on personnel and expert advice derived from scientific or technical knowledge.

Both sides appealed to the Supreme Court, which agreed to hear the consolidated cases in October. The cases are

Holder v. Humanitarian Law Project, and *Humanitarian Law Project v. Holder*.

David D. Cole, a lawyer with the Center for Constitutional Rights, which represents Fertig and other challengers to the law, told the court that the case concerned speech protected by the First Amendment “promoting lawful, nonviolent activities,” including “human rights advocacy and peace-making.”

Solicitor General Elena Kagan countered that the law allowed Fertig and the other challengers to say anything they liked so long as they did not direct their efforts toward or coordinate them with the designated groups.

A number of victims of McCarthy-era persecution filed a friend-of-the-court brief urging the Supreme Court to remember the lessons of history.

“I signed the brief,” said Chandler Davis, an emeritus professor of mathematics at the University of Toronto, “because I can testify to the way in which the dubious repression of dissent disrupted lives and disrupted political discourse.”

Professor Davis refused to cooperate with the House Un-American Activities Committee in 1954 and was dismissed from his position at the University of Michigan. Unable to find work in the United States, he moved to Canada. In 1991, the University of Michigan established an annual lecture series on academic freedom in honor of Professor Davis and others it had mistreated in the McCarthy era.

Fertig said the current climate was in some ways worse. “I think it’s more dangerous than McCarthyism,” he said. “It was not illegal to help the Communists or to be a Communist. You might lose your job, you might lose your friends, you might be ostracized. But you’d be free. Today, the same person would be thrown in jail.”

A friend-of-the-court brief—prepared by Edwin Meese III, the former United States attorney general; John C. Yoo, a former Bush administration lawyer; and others—called the civil liberties critique of the material-support law naïve.

The law represents “a considered wartime judgment by the political branches of the optimal means to confront the unique challenges posed by terrorism,” their brief said. Allowing any sort of contributions to terrorist organizations “simply because the donor intends that they be used for ‘peaceful’ purposes directly conflicts with Congress’s determination that no quarantine can effectively isolate ‘good’ activities from the evil of terrorism.”

Fertig said he could understand an argument against donating money, given the difficulty of controlling its use. But the sweep of the material-support law goes too far, he said. “Fear is manipulated,” Fertig said, “and the tools of the penal system are applied to inhibit people from speaking out.” Reported in: *New York Times*, February 11.

The U.S. Supreme Court has been barraged with more than three dozen legal briefs, including several from higher-education associations, in a case that could have a far-

reaching impact on colleges that have struggled to reconcile their nondiscrimination policies with religious student groups’ refusals to admit gay and lesbian students.

The case centers on the question of whether the University of California’s Hastings College of the Law acted legally in denying official recognition to a group of students who belonged to the Christian Legal Society, a national organization that excludes gay men, lesbians, and others whose behavior it regards as sexually immoral.

The arguments in the briefs make clear, however, that the case involves much more than a disagreement over college policy. The dispute has brought several constitutional rights into conflict. Academic freedom, religious freedom, freedom of association, and equal protection under the law all are described in one brief or another as threatened.

The court was scheduled to hear oral arguments in the case, *Christian Legal Society Chapter of the University of California, Hastings College of the Law v. Leo P. Martinez et al.*, on April 19.

The justices could avoid the need to issue a ruling by accepting the law school’s argument that they had erred in taking up the case at all, because of a lingering dispute over a key factual matter—the specifics of the nondiscrimination policy at issue.

If, however, the court decides the case, its ruling could drastically change colleges’ nondiscrimination policies and how the institutions determine which student groups merit official recognition and financial support.

Similar conflicts have popped up at a long list of other colleges—including the flagship universities of Idaho, Illinois, Oklahoma, and Wisconsin—where students have tried to set up Christian Legal Society chapters. Other groups with a religious focus, including the national Christian fraternities Beta Upsilon Chi and Kappa Upsilon Chi, the Christian Medical and Dental Associations, and Commission II Love Outreach Ministries, said in friend-of-the-court briefs that they had similarly bumped up against nondiscrimination policies.

Both the Christian Legal Society and the Foundation for Individual Rights in Education, which has submitted a friend-of-the-court brief on the society’s behalf, warn that a Supreme Court decision in Hastings’ favor would have a devastating impact on unpopular organizations, leaving them vulnerable to being infiltrated and hijacked by students who oppose them. The law school and some of its supporters argue that such warnings have no basis in reality, because there is no record of student groups’ being subverted in such a manner on campuses with nondiscrimination policies.

A friend-of-the-court brief filed by several national and campus groups representing lesbian, gay, bisexual, and transgendered law students argues that a large share of such students still encounter discrimination at law schools, and that efforts to remedy the problem would be hindered if the schools could not enforce policies against discrimination.

Two federal appeals courts reached sharply different conclusions after taking up similar disputes. The U.S. Court of Appeals for the Ninth Circuit, whose decision is being appealed to the Supreme Court, upheld a U.S. District Court's ruling that Hastings' denial of official recognition to the Christian Legal Society had "no significant impact" on students' ability to express their views. But the U.S. Court of Appeals for the Seventh Circuit blocked Southern Illinois University at Carbondale from applying a similar policy to the Christian Legal Society, declaring that the policy probably infringed on the group's freedom of expressive association.

Through the 2003–4 academic year, the Hastings student group called itself the Hastings Christian Fellowship, was open to anyone, and was allowed to operate just like any other student group at the San Francisco law school. What caused it to run afoul of the administration was its decision in 2004 to become affiliated with the Christian Legal Society, which denies membership to anyone who unrepentantly advocates or participates in sexual conduct the society regards as immoral.

The law school's subsequent withdrawal of recognition of the group as a registered student organization left it ineligible to receive grants from student fees, to participate in an annual student-organization fair, to call itself a "chapter" of the Christian Legal Society, or to communicate with the student body through the law school's newsletter, campus bulletin boards, or other college-sponsored channels. The group responded by suing, with its cause being taken up by lawyers from the Christian Legal Society's national office and the Arizona-based Alliance Defense Fund.

The briefs submitted to the Supreme Court show that the two sides are in serious disagreement over the specifics of the policy that led to the withdrawal of recognition. The Christian Legal Society's brief argues that the college initially told the local group that the campus anti-discrimination policy bars registered student organizations from having belief- or behavior-based membership criteria in which the beliefs are religious or the behaviors sexual—a requirement that, the brief says, leaves religious organizations distinctly burdened. Only later, the brief says, did Hastings officials say their policy simply requires registered student organizations to be open to anyone.

The law school's brief argues that the only policy it has had—and the only policy considered by the lower courts as a result of stipulations by both sides—is one requiring registered student organizations to be open to all. It argues that the other side, in asking the court to consider the constitutionality of a narrower prohibition against religious or sexual discrimination, is trying to rewrite the factual record to attack a straw man, and that the Supreme Court should drop the case if the decision to hear it was based on the Christian Legal Society's characterization of the policy at issue.

The Christian Legal Society's brief argues that its

members' freedom of religion and association are violated by the law school's requirement that registered student groups accept gay and lesbian students, and that members' right to free speech is infringed by their having to either forgo being able to speak as a campus organization or take in students they expect to challenge or water down their message.

The law school's brief denies that its all-comers requirement for student groups discriminates against religious organizations. The policy is viewpoint-neutral, the brief says; any number of groups, including those for gay students, might have to take in students who disagree with their beliefs. Moreover, it argues, the policy actually protects free speech, by allowing students to express unpopular viewpoints without being expelled from a student group. It says the Christian Legal Society remains free to use campus facilities and to communicate with students through means that are not college-sponsored, such as social-networking sites on the Internet.

Hastings Outlaw, a registered organization for gay, lesbian, and bisexual students, intervened as a defendant in the Christian Legal Society's lawsuit at the district-court level and remains an intervening party in the case. Its brief echoes many of the arguments made by the law school, emphasizing its belief that the Christian Legal Society has no right to demand financial support from student fees while remaining off-limits to some of the students from whom the money is derived.

In an interview, Michael C. Martin, a first-year law student and member of Hastings Outlaw's Board of Directors, said his group got involved in the case because it feared that the law school would give in to pressure from the Christian Legal Society and offer it an exemption from the nondiscrimination policy, as most law schools that have been similarly challenged have done. Instead, he said, Hastings Law has earned praise from his group by sticking up for the interests of its members.

"I don't believe in funding discriminatory organizations," Martin said. "For me, personally, that is a matter of conscience and a personal choice."

Of the 39 friend-of-the-court briefs filed in the case, 22 back the Christian Legal Society. Most come from religious or conservative groups, including the U.S. Conference of Catholic Bishops, which argues that the court should distinguish between discrimination based on sexual orientation and efforts to criticize immoral conduct.

Hastings Law is backed by 16 briefs. Among them, one filed by the American Council on Education and 13 other higher-education associations, including the Association of Jesuit Colleges and Universities, argues that the Supreme Court must let colleges set their own policies for student groups if it is to preserve the institutions' First Amendment right to academic freedom. Ten public universities or university systems have joined in defending viewpoint-neutral discrimination policies.

The American Council on Education's brief goes out of its way not to state whether public colleges should apply their anti-bias policies to religious groups. The brief notes that many public colleges have policies that are quite similar to that of Hastings, but that many others (in some cases because of the threats of lawsuits) don't. And still others have policies that require all groups to open their membership to everyone, but allow policies that only let members who share a group's faith be its leaders.

The brief says that these policies can all be seen as reasonable "educational judgments." Since educators widely agree that the out-of-classroom experience is a key part of the learning process, the brief says, colleges have every right to create rules for that part of campus life. "The First Amendment provides colleges and universities breathing room for their educational judgments," and this is part of the judicial respect accorded to academic freedom, the brief says.

Colleges like Hastings, the brief says, are not infringing on the rights of religious students. Rather, they are adopting a reasonable policy that "all students should have access" to all registered student organizations. And that is part of what prior Supreme Court decisions have respected as the right of colleges to "have the freedom to make decisions about how and what to teach," the brief says.

While the Christian Legal Society has argued that its First Amendment rights are being violated, the brief says colleges also have rights. "[S]tudent organizations are not the only ones with First Amendment rights at stake in this case. Hastings and many other institutions have made an academic judgment that membership in [student organizations] is an important opportunity for learning and that this opportunity—created and funded with that specific purpose in mind—should be available to all."

The brief also questions the ideas put forth by the Christian Legal Society and its defenders that a victory for Hastings in the case could effectively prevent Christian students from doing anything organized at public campuses. The brief notes that while official recognition gives student groups some additional rights (and money), the lack of that status does not kick anyone off campus, at Hastings or at other colleges. The Christian Legal Society has never been barred from meeting nor have its members been barred from talking about their views or encouraging others to join, the brief notes.

Similar arguments were made in a brief by a group of state universities and university systems that have policies similar to those of Hastings—and that want to continue such policies. "Nondiscrimination policies are viewpoint neutral. . . . [T]hese policies do not single out religious organizations. They apply to all student organizations, whether religious or not," says the brief.

One of the arguments put forth by the Christian Legal Society and its supporters is that the anti-bias rules leave the potential for students who disagree with a group to join

en masse for the purpose of destroying a group. But the state universities' brief calls this an "extremely remote possibility" and states that the "broad range" of groups at their campuses—including religious groups—demonstrates that it is possible to abide by the rules and not be taken over, and that this is in fact the well-established norm.

"Requirements that student organizations accept all students give all students an equal opportunity to utilize publicly-funded facilities and public funds, and they allow students to arrive at their own views by interacting with persons from different perspectives," says the brief. It was submitted on behalf of the California State University System, Oregon State, Pennsylvania State, Portland State, and Rutgers Universities; the Universities of California, Kentucky, Montana, Oregon, and Rhode Island; and the University System of Maryland.

Another brief offered backing for Hastings from the Association of American Law Schools. This brief notes that the association requires members to provide equal opportunity to all students, regardless of race, ethnicity, gender, religion, disability or sexual orientation. While the association leaves to its members how to carry out that requirement, the brief argues that a policy like the one at Hastings is one way to do so. "A decision to constitutionalize this area of sensitive educational judgment would rigidify the policy choices of state-supported AALS member schools, and thereby undermine the principles to which the AALS and its members are committed," the brief says.

While some higher education groups want the Supreme Court to focus more on the academic freedom issues, others want the justices to act in a way that affirms the right of religious colleges to apply religious tests for some or all hiring. If Hastings wins the case, these colleges say in a brief, there will be "little constitutional protection" for religious employers, especially those that participate in any federal programs, as most Christian colleges do with regard to student aid.

This brief was submitted by, among others, the Council for Christian Colleges and Universities, Azusa Pacific University, Colorado Christian University, and Regent University. Federal law currently grants these and other religious colleges the right to limit employment to those who share their religious views—even though non-religious organizations may not discriminate in hiring based on religious views. This exemption for religious colleges could be at risk, the brief says, if the court rejects the idea that religious student organizations deserve a similar exemption.

And these Christian colleges would see their very identities destroyed in such a scenario, the brief says. "Hiring based on religion is to many religious organizations what hiring based on academic excellence is to Harvard or what hiring based on software proficiency is to Microsoft, or what hiring based on a commitment to the environment is to the Sierra Club," the brief says. "It is not inherently invidious for employers, whether religious or secular, to require

employees to adhere to their institutional values.”

Other religious organizations that filed briefs on behalf of the Christian Legal Society include the officers and past presidents of the Evangelical Theological Society, the American Islamic Congress, and the National Council of Young Israel.

Not every religious group is backing the Christian Legal Society. A brief from the Baptist Joint Committee for Religious Liberty and the Interfaith Alliance Foundation does not take a side but urges the court to avoid authorizing public support for religious organizations or allowing public colleges to curtail the speech of private religious groups.

Among the groups joining the American Council on Education brief was the Association of Jesuit Colleges and Universities. While the brief takes no stand on Roman Catholic teachings, the Jesuit endorsement was unexpected because the U.S. Conference of Catholic Bishops previously filed a brief backing the Christian Legal Society in the case. However, the bishops and the brief backed by the Jesuits are focusing on different issues.

The bishops' brief states that it is entering the case out of concern that lower courts are making no distinction between what the brief considers principled opposition to gay sexual acts and bias against people who have a gay sexual orientation. The brief says that the bishops believe that all people, include those with a gay sexual orientation, should enjoy "equal protection of the laws and freedom from unjust discrimination." But the brief also argues that it is not inconsistent for the bishops also to believe that "extramarital sexual conduct (including same-sex sexual conduct) is harmful to the person and morally illicit."

When people and courts don't accept the right of the bishops and others to have both of those beliefs, they stigmatize those who hold them as bigoted and deny their rights to be heard, the brief says. A key fact for the Supreme Court to consider, the bishops argue, is that the Christian Legal Society wasn't enforcing its rules based on orientation alone, but was only excluding students for "unremitting engagement in or advocacy for extramarital sexual activity." Because orientation wasn't at issue, they argue, Hastings should not have denied the group recognition.

The Rev. Charles L. Currie, president of the Jesuit college organization, said that he did not "see any fundamental difference" between the bishops' brief and the American Council on Education brief. "Both oppose discrimination, but see it manifested in different ways."

Father Currie said that the Jesuit colleges joined the ACE brief "because of the educational value of student organizations being open to the different perspectives provided by diverse membership. A university should have the freedom to require such openness. If a group does not want to abide by that requirement they in turn have the freedom not to seek official recognition."

He added that "we see our support of this brief as support for academic freedom, ecumenism and inter-religious

dialogue, values that we find especially important in the education of students today. We respect the fact that others might approach the situation differently."

States' attorneys general are split. Those representing Maryland, Massachusetts, New Jersey, and Vermont have filed a brief warning that states may choose not to provide financing to student groups if required to subsidize discriminatory behavior. Fourteen other states, including Alabama, Colorado, Michigan, and Pennsylvania, have filed a brief arguing that the Hastings policy violates the First Amendment. Reported in: insidehighered.com, March 16; *Chronicle of Higher Education* online, April 1.

A federal appeals court ruling allowing a school district to veto an orchestral religious piece at high school graduation survived Supreme Court review March 22 over a dissent by a conservative justice, who said the decision would stifle freedom of expression.

The justices denied a 12th-grade musician's appeal of a ruling in September by the U.S. Court of Appeals for the Ninth Circuit in San Francisco. The appeals court said school officials' decision to keep the graduation program secular was a reasonable effort to avoid a constitutional controversy and did not violate students' rights.

The ruling, in a case from Washington state, is binding on federal courts in the circuit's nine states, which include California. Supreme Court Justice Samuel Alito said that the case has disturbing implications for the nearly ten million public school students in those states.

"School administrators in some communities may choose to avoid 'controversy' by banishing all musical pieces with 'religious connotations,'" Alito said in a dissent from the court's refusal to grant review. Such review requires four votes among the nine justices.

The appeals court ruling might be extended beyond the context of religious music at graduation and lead to "wide-ranging censorship of student speech that expresses controversial ideas," Alito said.

Lawyers for the student who sued the school district expressed similar views, telling the court that the appellate ruling represented "political correctness run amok." The school district said opponents were exaggerating the effect of the ruling.

The case arose at a high school in Everett, Washington, in 2006, a year after the school choir's performance of a religious piece at graduation drew complaints from some students and residents. When members of the school's woodwind ensemble proposed playing an instrumental version of "Ave Maria," by the German composer Franz Biebl, the district superintendent decreed that all graduation music should be secular.

In a 2-1 ruling in September, the appeals court rejected a student musician's claim that the superintendent had censored her musical expression and acted with hostility toward religion. The court said graduation takes place before a "captive audience" and, unlike school concerts, has

too limited a program to allow balance between religious and secular works.

The school district was trying to avoid a possible violation of the constitutional ban on government sponsorship or endorsement of religion, Judge Richard Tallman said in the majority opinion.

Dissenting Judge Milan Smith said such rulings would "hasten the retrogression of our young into a nation of Philistines" with little understanding of their cultural heritage. The case is *Nurre v. Whitehead*. Reported in: *San Francisco Chronicle*, March 23.

The Supreme Court on March 8 agreed to decide whether the father of a Marine killed in Iraq may sue protesters who picketed his son's funeral with signs that read "God Hates You" and "Thank God for Dead Soldiers."

A federal appeals court dismissed the suit on First Amendment grounds and threw out a \$5 million award against the protesters, who are members of Westboro Baptist Church in Topeka, Kansas, and maintain that God hates homosexuality and that the death of soldiers in Iraq and Afghanistan is God's way of punishing the United States for its tolerance of it.

The fallen Marine was Lance Cpl. Matthew A. Snyder, and his funeral was held in Westminster, Maryland, in 2006. His father, Albert Snyder, testified at trial in 2007 that the protests continued to haunt and disturb him.

"For the rest of my life," Snyder said, "I will remember what they did to me, and it has tarnished the memory of my son's last hour on earth." He added that he became angry and tearful when he thought about the protest and that the memory of it had caused him to vomit.

The protesters complied with local laws and instructions from the police about keeping their distance. They did not know the Snyders, and they had staged similar protests at other military funerals. Snyder's central claim is that the protesters intentionally inflicted emotional distress on him.

In 1988, the Supreme Court ruled that the First Amendment barred the Rev. Jerry Falwell from suing *Hustler* magazine for intentional infliction of emotional distress. *Hustler* had published a parody of an advertisement suggesting that Falwell had incestuous sex in an outhouse. (Coincidentally, Falwell expressed views not wholly different from those of the funeral protesters, saying that the nation's attitudes toward homosexuality and abortion had played a role in the September 11 attacks.)

Snyder contends that the *Hustler* decision should not apply to suits brought by one private person against another. In libel and other cases, the Supreme Court has limited the First Amendment protection afforded to purely private speech.

A three-judge panel of the United States Court of Appeals for the Fourth Circuit, in Richmond, Virginia, unanimously ruled against Snyder, though the judges split 2-to-1 over the rationale. The majority said the messages on the protesters' signs were protected under the First Amendment because

they addressed matters of general interest.

"As utterly distasteful as these signs are," Judge Robert B. King wrote for the majority, "they involve matters of public concern, including the issues of homosexuals in the military, the sex-abuse scandal within the Catholic Church, and the political and moral conduct of the United States and its citizens."

The Supreme Court will consider the case, *Snyder v. Phelps*, in the fall. Reported in: *New York Times*, March 8.

The court also agreed March 8 to decide whether a 2004 Bush administration antiterrorism initiative violated the privacy rights of scientists and engineers at the Jet Propulsion Laboratory, a research facility operated by the California Institute of Technology under a contract with NASA.

The initiative extended the background checks required for many government jobs to contract employees like those at the laboratory. The employees sued, saying that such government investigations are needlessly intrusive and violate privacy rights.

The employees, who do not have security clearances and are not involved in classified or military activities, objected to answering questions about drug use and counseling, and to signing a form authorizing the government to collect information from schools, landlords, employers and others.

The United States Court of Appeals for the Ninth Circuit, in San Francisco, ordered the background checks halted while the case went forward. The full court declined to review that decision, with several judges dissenting.

Judge Andrew J. Kleinfeld said the court's decision was "likely to impair national security" by forbidding the government "from doing what any sensible private employer would do."

Chief Judge Alex Kozinski urged the Supreme Court to hear the case, *NASA v. Nelson*. He said the law in this area had turned into a turducken—a chicken stuffed into a duck that is then stuffed into a turkey. Reported in: *New York Times*, March 8.

In a decision March 8, the court interpreted a 2005 bankruptcy law narrowly to avoid a First Amendment challenge. The law forbids some professionals from advising their clients "to incur more debt in contemplation of" a bankruptcy filing.

The first issue in the case was whether the law applied to lawyers, and the court, in an opinion by Justice Sonia Sotomayor, said it did. The second, harder question was whether the law violated the First Amendment in forbidding lawyers from giving some kinds of advice.

No one disputed that lawyers could be forbidden from counseling their clients to abuse the bankruptcy system by piling on debt right before filing. But there are also sensible reasons to take on additional debt in the face of possible bankruptcy.

Justice Sotomayor wrote that the law, properly read, prohibited lawyers "only from advising a debtor to incur more debt because the debtor is filing for bankruptcy, rather than

for a valid purpose.” Advice about refinancing a mortgage, buying a reliable car to get to work and paying medical bills are all outside the scope of the law, Justice Sotomayor said.

The ruling in the case, *Milavetz, Gallop & Milavetz v. United States*, was unanimous, though Justices Antonin Scalia and Clarence Thomas did not join in all of Justice Sotomayor’s reasoning. Reported in: *New York Times*, March 8.

“under God”

San Francisco, California

The federal court that touched off a furor in 2002 by declaring the words “under God” in the Pledge of Allegiance to be an unconstitutional endorsement of religion took another look at the issue March 11 and said the phrase invokes patriotism, not religious faith.

The daily schoolroom ritual is not a prayer, but instead “a recognition of our founders’ political philosophy that a power greater than the government gives the people their inalienable rights,” said the U.S. Court of Appeals for the Ninth Circuit in San Francisco in a 2–1 ruling.

“Thus, the pledge is an endorsement of our form of government, not of religion or any particular sect.”

The dissenting judge, Stephen Reinhardt, said statements by members of Congress who added “under God” to the pledge in 1954 show conclusively that it was intended to “indoctrinate our nation’s children with a state-held religious belief.”

In a separate ruling, the same panel upheld the use of the national motto, “In God We Trust,” on coins and currency. The language is patriotic and ceremonial, not religious, the court said. Reinhardt reluctantly joined the 3–0 decision, saying he was bound by the court’s newly established precedent in the pledge case.

Both suits were filed by Michael Newdow, a Sacramento atheist who has brought numerous challenges to government-sponsored religious invocations. He said he would appeal the rulings to the full appellate court and the U.S. Supreme Court, but was not optimistic.

The rulings sent two messages, Newdow said: “To be a real American, you believe in God, and the judiciary unfortunately sometimes can’t be trusted to uphold our constitutional rights when you’re a disenfranchised minority.”

Former Justice Department lawyer Gregory Katsas, who represented the Bush administration in the pledge case when the court heard it in 2007, heard a different message: that “one nation, under God” suggests a government that “is limited and bound to respect individual rights.”

Newdow first challenged the Pledge of Allegiance in 2000 on behalf of his daughter, a student in a Sacramento-area elementary school. The appeals court ruled in June 2002 that the addition of “under God” was religiously

motivated and sent “a message to nonbelievers that they are outsiders,” in violation of the constitutional separation of church and state.

Congress reacted furiously, passing a resolution with virtually no dissenting votes that denounced the decision. The court put its ruling on hold until the case reached the Supreme Court, which sidestepped the constitutional issue and ruled that Newdow could not represent his daughter’s interests because her mother had legal custody.

Newdow then refiled the suit on behalf of the parent of a kindergartner in the Sacramento suburb of Rio Linda. He won the first round before a federal judge in 2005, but a new appeals court panel issued a 193-page ruling March 11 upholding the pledge.

In the majority opinion, Judge Carlos Bea acknowledged that “the words ‘under God’ have religious significance,” but said they do not “convert the pledge into a prayer.”

The 1954 law that added those words at the height of the Cold War was meant to convey the idea of a limited government, “in stark contrast to the unlimited power exercised by communist forms of government,” said Bea, joined by Judge Dorothy Nelson. “Congress’ ostensible and predominant purpose was to inspire patriotism.”

Reinhardt, a member of the 2002 panel that found the language unconstitutional, said the new majority ignored overwhelming evidence of religious motivation by the 1954 Congress. He cited statements by numerous lawmakers denouncing atheistic communism and declaring a belief in God to be part of the American way of life. Reinhardt also pointed to President Dwight Eisenhower’s signing statement that millions of schoolchildren would now proclaim “the dedication of our nation and its people to the Almighty.”

During the same period, Reinhardt said, Congress adopted “In God We Trust” as the national motto, ordered it inscribed on paper money and established an annual National Prayer Breakfast. By inserting religious language into the pledge, Reinhardt said, “we abandoned our historic principle that secular matters were for the state and matters of faith were for the church.” Reported in: *San Francisco Chronicle*, March 12.

schools

Miami, Florida

A South Florida teenager who sued her former principal after she was suspended for creating a Facebook page criticizing a teacher can proceed with her lawsuit, a federal judge has ruled.

The student, Katherine Evans, is seeking to have her suspension expunged from her disciplinary record. School officials suspended her for three days, saying she had been “cyberbullying” the teacher, Sarah Phelps. Evans is also

seeking a “nominal fee” for what she argues was a violation of her First Amendment rights, her lawyers said, and payment of her legal fees.

The former principal, Peter Bayer, who worked at the Pembroke Pines Charter High School, had asked that the case be dismissed. But Magistrate Judge Barry L. Garber denied Bayer’s petition and rejected his claims of qualified immunity.

Lawyers for Evans, 19, now a sophomore at the University of Florida, said that they were pleased by the ruling and that they hoped to bring the case to trial in the spring. One of the lawyers, Maria Kayanan, associate legal director of the American Civil Liberties Union of Florida, said the judge’s decision had clearly extended the protection of First Amendment rights to online writings of a nonthreatening manner.

“This is an important victory both for Ms. Evans and Internet free speech,” Kayanan said, “because it upholds the principle that the right to freedom of speech and expression in America does not depend on the technology used to convey opinions and ideas.”

Evans’s suspension first came to the attention of the civil liberties union in 2007. Then a high school senior and an honor student, Evans repeatedly clashed with Phelps, her English teacher, over assignments, Evans has said. She turned to Facebook to vent her frustration. At home on her computer, Evans created a Facebook page titled “Ms. Sarah Phelps is the worst teacher I’ve ever had” and invited past and current students of Phelps to post their own comments.

Some students wrote comments agreeing with Evans’s criticism of Phelps. Others offered support for the teacher. After a few days, Evans took down the Facebook page. Two months later, Evans says, she was called into the principal’s office and told she was being suspended for creating the page. Reported in: *New York Times*, February 16.

colleges and universities

Wilmington, North Carolina

Garcetti strikes again. That’s the U.S. Supreme Court decision—in a case having nothing to do with higher education—that faculty advocates are worried is being interpreted incorrectly and in ways that limit professors’ free speech.

In the latest ruling, a federal judge rejected a suit by Mike Adams, an associate professor of criminal justice at the University of North Carolina at Wilmington who charged that he was denied promotion to full professor because of his conservative, Christian views. The suit was rejected for many reasons, including a judge’s finding that there were legitimate reasons cited for the decision that had nothing to do with Adams’s beliefs. (His colleagues faulted his research productivity and service, although they generally gave him high marks on teaching.)

But part of the judge’s ruling also rejected the idea that Adams has First Amendment protection for the columns he wrote for various publications (columns known for a mocking tone along with hard line views) because he submitted them as part of his promotion dossier. And the reason that the columns have no protection, the judge ruled, is the Supreme Court’s decision in *Garcetti v. Ceballos*. Because Adams is receiving strong support from conservative groups for his suit, the ruling is drawing their attention to *Garcetti*’s impact on the academy.

The Alliance Defense Fund, which has been backing Adams, issued a statement in which Jordan Lorence, one of its lawyers, said: “We disagree with the court’s assessment that Dr. Adams’s speech is somehow not protected by the Constitution. Opinion columns are classic examples of free speech protected by the First Amendment, and mentioning them on a promotion application does not change this fact.”

Garcetti v. Ceballos was filed by a deputy district attorney in Los Angeles who was demoted after he criticized a local sheriff’s conduct to his supervisors. The ruling in the case found that First Amendment protections do not extend to public employees when they speak in capacities related to their jobs. A footnote said that the ruling did not necessarily apply to higher education. But to the dismay of faculty groups, several federal judges have applied it in the higher education context.

Several of those cases have involved faculty members who criticized their administrations. The Adams case is one that might seem quite close to the First Amendment, as it involves controversial stands on political issues.

The ruling in the case said, however, that even if the columns played some role in his treatment, they lacked First Amendment protection. The judge ruled that as soon as Adams submitted them in his tenure dossier, they became part of his work as a professor. And once they became part of his work as a professor, he lost First Amendment protection for them, the judge ruled, citing *Garcetti*.

Rachel Levinson, senior counsel of the American Association of University Professors, said that she was concerned that the judge didn’t “make any attempt to grapple” with the Supreme Court’s explicit “reservation” of the question of whether *Garcetti* should be applied to faculty members. Levinson said that the decision was especially of concern in light of the subject matter of the Adams columns—political issues.

“The nexus between the speech in question here and the categories that the Supreme Court reserved for later inquiry is even clearer, and the court nevertheless completely fails to recognize not only that the *Garcetti* court declined to impose its official duties framework on faculty speech but also that the framework is completely inapposite in the faculty context because faculty are not hired to toe a

(continued on page 134)

is it legal?



library

Sacramento, California

GOP gubernatorial candidate Meg Whitman is offering up copies of her policy manuscript. That would be the 48-page, picture-packed glossy policy book, we mean, plan or better yet magazine (to use the campaign's latest terminology) that lays out Whitman's priorities for running the state.

She's touted her plan in her latest TV spot and announced March 30 that she has mailed two copies of the plan to each of the 1,400 or so public libraries across California.

"I encourage the libraries to display my magazine in their periodicals section so voters can gain a clear understanding of how I will govern, if elected in November," Whitman said in a statement.

But the Sacramento Public Library is one library that won't be posting the publication, said Public Information Coordinator Don Burns, who said this was the first time in his 18 years on the job that he's heard of a candidate asking to put campaign materials on display at the library.

The decision isn't personal, it's policy, said Burns, who pointed to page 134 of the Sacramento Public Libraries Public Services Manual. The regulation, on the books since 1993, reads: "Partisan politics with mention of a specific

candidate and religious notices of any kind are prohibited."

As for other libraries across the state, a representative for the California Library Association said she didn't know of any laws prohibiting political speech from being put on display and that it would likely be up to individual branches to craft their own policy on the matter. Reported in: *Sacramento Bee*, March 31.

schools

Apex, North Carolina

A Wake County middle-school teacher may be fired after she and her friends made caustic remarks on a Facebook page about her students, the South and Christianity.

Melissa Hussain, an eighth-grade science teacher at West Lake Middle School in southern Wake County, was suspended with pay February 12 while investigators review her case, according to Greg Thomas, a Wake schools spokesman. The suspension came after some of Hussain's students and their parents objected to comments on her Facebook page, many revolving around her interaction with Christian students.

Hussain wrote on the social-networking site that it was a "hate crime" that students anonymously left a Bible on her desk, and she told how she "was able to shame her kids" over the incident. Her Facebook page included comments from friends about "ignorant southern rednecks," and one commenter suggested Hussain retaliate by bringing a Dale Earnhardt Jr. poster to class with a swastika drawn on the NASCAR driver's forehead.

"I don't defend what the kids were doing," said Murray Inman, a parent of one of Hussain's students. "I just couldn't imagine an educator, or a group of educators, engaging in this kind of dialogue about kids."

The Wake district doesn't have a policy on the use of social networking sites, Thomas said. But the district, North Carolina's largest, does have a code of ethics for employees that the school spokesman says applies to social networking. The code says employees' conduct "should be such as to protect both the person's integrity and/or reputation and that of the school system."

Teachers across the nation have been suspended or fired because of questionable material posted on their Facebook pages and other online social networking sites. In 2008, seven Charlotte-Mecklenburg school employees were disciplined and at least one was fired because of Facebook postings. That led to a memo going to all Charlotte-Mecklenburg school staff warning that offensive postings to social networking sites are grounds for termination or disciplinary action.

Thomas and Jennifer Lanane, president of the Wake County chapter of the N.C. Association of Educators, said they're not aware of any Wake school employees who were fired because of postings. But Lanane, who said she wasn't

aware of the details of the Hussain case, said teachers need to be careful about information they put online.

"We are public figures," Lanane said. "We are held to a higher standard."

In Hussain's case, the comments in question were on the public side of her Facebook page. She has since limited public access.

Parents said the situation escalated after a student put a postcard of Jesus on Hussain's desk that the teacher threw in the trash. Parents also said Hussain sent to the office students who, during a lesson about evolution, asked about the role of God in creation.

On her Facebook page, Hussain wrote about students spreading rumors that she was a Jesus hater. She complained about her students wearing Jesus T-shirts and singing "Jesus Loves Me." She objected to students reading the Bible instead of doing their work.

But Annette Balint, whose daughter is in Hussain's class, said the students have the right to wear those shirts and sing "Jesus Loves Me," a long-time Sunday School staple. She said the students were reading the Bible during free time in class.

"She doesn't have to be a professing Christian to be in the classroom," Balint said. "But she can't go the other way and not allow God to be mentioned."

Hussain, a 2004 Florida State University graduate, has been a Wake teacher since 2006. Her religious affiliation isn't on her Facebook page.

The flash point for the comments came after the Bible was left on Hussain's desk in December. The Bible was accompanied by an anonymous card, which, according to Hussain, said "'Merry Christmas' with Christ underlined and bolded." She said there was no love shown in giving her the Bible. "I can't believe the cruelty and ignorance of people sometimes," Hussain wrote on her Facebook page.

Hussain also said she wouldn't let the Bible incident "go unpunished." Her friends soon joined the discussion about the situation. The one who suggested Hussain's "getting even" by bringing the swastika-marred Earnhardt poster to class said it would be "teaching" students a lesson. "And without a job," Hussain responded. "But I like it!"

Hussain's comments included one where she complained that she "hates" parents who complain about their child's first B in middle school. She said her husband suggested she start a blog "based on ridiculous students and their parents."

Balint said it was clear to the class that Hussain was talking about her daughter. "I feel violated that she would say those things," she said.

The length of the investigation is frustrating parents. "My biggest concern is whether the resentment between the students and the teacher will continue for the rest of the school year," said Robert Boretti, a parent. Reported in: *Raleigh News & Observer*, February 18.

Rosemont, Pennsylvania

Lower Merion School District officials used school-issued laptop computers to illegally spy on students, according to a lawsuit filed in U.S. District Court.

The suit, filed February 16, says unnamed school officials at Harriton High School in Rosemont remotely activated the webcam on a student's computer last year because the district believed he "was engaged in improper behavior in his home."

An assistant principal at Harriton confronted the student for "improper behavior" on November 11 and cited a photograph taken by the webcam as evidence.

Michael E. and Holly S. Robbins, of Penn Valley, filed the suit on behalf of their son, Blake. They are seeking class action status for the suit.

The district issued school-owned laptops to 2,290 high school students, starting last school year at Harriton, in an effort to promote more "engaged and active learning and enhanced student achievement," superintendent Christopher W. McGinley said in a message on the district website.

In a statement on its website, the district said that "The laptops do contain a security feature intended to track lost, stolen and missing laptops. This feature has been deactivated effective today."

In a later statement, the district said: "Upon a report of a suspected lost, stolen or missing laptop, the feature was activated by the District's security and technology departments. The tracking-security feature was limited to taking a still image of the operator and the operator's screen. This feature has only been used for the limited purpose of locating a lost, stolen or missing laptop. The District has not used the tracking feature or web cam for any other purpose or in any other manner whatsoever."

When the computers were distributed to students, the district did not disclose that it could activate the cameras at any time, the suit alleges. It claims the school district violated federal and state wiretapping laws and violated students' civil rights.

The suit also claims the district's use of the webcams amounted to an invasion of privacy and that any intercepted images could show "images of minors and their parents or friends in compromising or embarrassing positions, including, but not limited to, in various states of undress."

The lawsuit did not say what improper activity Blake Robbins was accused of, or what, if any, discipline resulted.

Virginia DiMedio, who was the Lower Merion district's technology director until she retired last summer, said that "if there was a report that a computer was stolen, the next time a person opened it up, it would take their picture and give us their IP [internet protocol] address—the location of where it was coming from." She said that feature had been used several times to trace stolen laptops, but there had been no discussion of using that capability to monitor students' behavior. "I can't imagine anyone in the district did

anything other than track stolen computers,” she said.

Lillie Coney, associate director of the Electronic Privacy Information Center, a privacy watchdog group, said that she had not heard of a previous case where school officials were alleged to have monitored student behavior at home via a computer. If the lawsuits’ allegations are true, Coney said, “this is an outrageous invasion of individual privacy—it shocks the conscience.” Reported in: *Philadelphia Inquirer*, February 18.

colleges and universities

Berkeley, California

A campus crackdown on protesters has brought relative calm to the University of California at Berkeley this semester, but it’s provoking accusations that administrators are intimidating students with vague charges and quelling free speech with an arbitrary application of rules.

Compared with the fall semester, when students angry over budget cuts seized buildings, clashed with police and vandalized Chancellor Robert Birgeneau’s home, the spring semester has been quiet save for one wild February night when students trashed a construction site and rampaged down Telegraph Avenue.

But the university is focusing on protests from November and December, and has accused at least 63 students of violating the Code of Student Conduct. Disciplinary action includes possible suspension.

Students say the drawn-out disciplinary process is riddled with problems and is stifling legitimate activism.

“You look around the room and say, ‘How many people are in?’ And nobody’s in,” said one doctoral student facing disciplinary charges who declined to be named. “Either they have conduct charges against them, or they can’t risk getting them, or they’re just scared.”

Many won’t even attend rallies, said freshman Abhay Agarwal, also facing charges. “Nobody wants to get suspended.”

Campus officials deny they are trying to muffle free speech. “The campus applies the code consistently and fairly,” said Susan Trageser, assistant dean of students. “The conduct process is in no way intended to squelch free speech.”

Dozens of students have received charges: destroying property, breaking into buildings, threatening violence, unlawful assembly and more. Students say the charges are overly broad.

Those accused are interviewed and entitled to a hearing, Trageser said. “It’s an educational process where we try to figure out exactly what happened.”

If investigators find a student “more than likely” violated the code, she said, “we try to work with the student to resolve the case with educational sanctions,” including writing an essay about their decisions.

Students liken the process to a high-stakes legal proceeding—but without safeguards to protect suspects’ rights. They’ve formed the Campus Rights Project with a group of law students and a faculty adviser to help navigate through it.

One objection is that the university lifted its timeline for swift resolution of cases. Trageser said that was done in August because her staff would be out for weeks on cost-cutting furloughs.

Students also say that a rule barring advisers from speaking during a hearing denies them their right to counsel. And they say they’re being pressured to accept punishment on flimsy evidence—or face more stringent sanctions.

“I think it’s a warning to students that their form of protest will not be tolerated and that they must check their constitutional rights at the campus gate,” said Steve Rosenbaum, a law school lecturer advising the students.

One of those in trouble is Agarwal. Last fall, the freshman posted flyers titled “They are Lying to You,” featuring photos of Birgeneau, campus Police Chief Mitch Celaya and Dean Jonathan Poullard. It’s against campus rules to post flyers in undesignated areas. Agarwal, who said he put them up by the Free Speech Cafe, said he’s being charged not for posting them, but for their content.

“My case is the first that I or anyone else has heard of where the Office of Student Conduct has pursued charges for such a violation,” he said. “I’ve seen flyers on doors, windows and buildings that are against the rules almost every day of my education here.”

Trageser said her office follows up on about three improper postings per year. “I feel very comfortable saying it had nothing to do with the content,” she said.

Another student whose case has gotten attention is Angela Miller, a sophomore. She was among hundreds present at the chancellor’s house December 11 when protesters smashed windows, lamps and planters. A photo shows Miller with a torch, which she denies throwing. Police arrested eight as the crowd fled, including Miller and junior Zach Bowin. Both were released without charges but were suspended.

Bowin’s suspension was rescinded. Miller’s was not. Letters show the decisions were based largely on their academic record, which students say reveals an ad hoc disciplinary system.

A letter to Bowin from the hearing panel praises him for being “an outstanding student” as a factor in clearing him. Miller’s letter refers to her “poor academic record.” Until a formal hearing in May, she may attend classes but may not otherwise set foot on campus. She earned two new violations for attending a campus symposium on the disciplinary process.

The double standard is “unfair,” said law student Daniela Urban. “The presumption for students that have good academics is that they did less wrong.”

Trageser said the panel relies on academic information

"so we can help the student." Miller can avoid a hearing by accepting a one-year suspension and writing an essay. If she declines, punishment could be even more stringent.

Others also have settlement offers, including seven-month suspensions or stayed suspensions.

Student Callie Maidhof has written to faculty asking for help in opposing the process. Present at most of last fall's protests, Maidhof said she's among many whose charges are "unsupported by evidence" and that even a stayed suspension is unacceptable because a subsequent complaint about her would mean instant suspension.

"This is an extremely vulnerable situation," she wrote. "It would effectively shut down my participation in any activism or protest in any capacity. We need all the help we can get." Reported in: *San Francisco Chronicle*, March 29.

Fresno, California

Fresno City College has responded to complaints from three students and the local chapter of the American Civil Liberties Union by moving to reprimand a health-sciences instructor accused of insulting gay men and lesbians and engaging in religious indoctrination in the classroom.

Officials of the community college in central California notified the instructor, Bradley Lopez, in March that they planned to put a letter of reprimand in his file and would fire him if he engaged in Bible-based instruction or made disparaging remarks about homosexuals in the future, according to Lopez's lawyer, Charles F. Magill.

Magill said Lopez continued to dispute the college's version of what happened in the classroom. Lopez is fighting to keep the letter from being placed in his file, and might file a lawsuit claiming violations of his First Amendment rights if college administrators proceeded with plans to reprimand him, Magill said.

The controversy over Lopez's classroom remarks has provoked a clash between two civil-liberties organizations. The American Civil Liberties Union Foundation of Northern California represents two of the three students who filed grievances against Lopez, while the Pacific Justice Institute, a Sacramento-based legal-advocacy group that takes up cases involving religious freedom, hired Magill to represent the instructor.

Clouding the debate over the constitutional principles being invoked are basic factual disputes. Magill says only one of the three students who complained about Lopez was actually in the Health Sciences I class where the instructor allegedly made his remarks; Elizabeth Gill, a lawyer for the local ACLU chapter, says two of the three were. More important, Lopez denies engaging in religious indoctrination or making anti-homosexual remarks in the classroom.

In a letter sent last month to the students who had filed the grievances, the college's vice president for student services, Christopher M. Villa, said his investigation

of the students' complaints had determined that Lopez created a hostile learning environment and violated the local community-college district's policies against religion indoctrination and insults based on sexual orientation. Lopez's harassing conduct was not covered by the college's academic-freedom policy, and, even if it were, the district's policies "are clear that any apparent conflict between the academic-freedom policy and the prohibition-of-harassment policy is to be resolved in favor of the harassment policy," the letter said.

Villa's letter indicated that his investigation of the students' complaints had found support for several of their allegations. Among them, Lopez was accused of discussing the Bible, assigning readings from it, and showing students a slide saying that homosexuality is a "biological misapplication of human sexuality" for which the "recommended treatment" is psychological counseling and hormonal supplements.

The classroom presentation characterizing homosexuality as a treatable mental disorder "was unrelated to any legitimate course objective," the letter said. Lopez's use of the Bible in class, the letter said, "is inconsistent with an instructor's duty to present materials consistent with the attainment of course objectives or the achievement of an educational principle," and could expose the community college district to being sued for violating the First Amendment's establishment clause.

One student who complained about Lopez was Jacqueline Mahaffey, 24, of Fresno. She said Lopez assigned Bible study as homework, said that homosexuals were "degrading society" and contradicted the textbook by insisting that abortion—not cancer—was the leading cause of death. "He was teaching things that were definitely not in the curriculum," said Mahaffey, who took the introductory health class last semester. She said she stayed in the class—even earning an "A"—but registered her concerns with college officials.

Lopez's use of religious references in class had been cited previously by students who post anonymously to the Web site ratemyprofessor.com. The respondents gave him mixed reviews, with some describing him as funny and helpful and others complaining that he was narrow-minded and improperly introduced religious beliefs into the class.

Lopez has a doctorate in education through the joint doctorate program offered by California State University, Fresno, and University of California at Davis, college officials said.

Magill denied that Lopez had ever made antigay remarks or shown a slide describing homosexuality as a mental illness. He said the extent of Lopez's use of the Bible was a homework assignment in which students were asked to read a New Testament passage about the "immaculate conception" of Jesus Christ and consider how being conceived in such a way would have an effect on the makeup of his chromosomes.

"I think there is a chilling effect," Magill said, "when someone is accused of wrongdoing when there is no support for it." Reported in: *Chronicle of Higher Education* online, April 2; *Fresno Bee*, February 9.

St. Louis, Missouri

David Horowitz can't seem to get into Saint Louis University no matter how hard he tries. Last year, the university blocked a student organization from bringing Horowitz to the university for one of his talks about "Islamo-fascism." Horowitz is a conservative critic of higher education as well as a wide range of other sectors of society. The university said at the time that it didn't want Horowitz to talk on campus in a way that could be divisive (as many of Horowitz's critics have said his talks on Islam tend to be). Students also reported that they were told by university administrators that they didn't want Horowitz speaking without someone who would offer contrasting views.

Horowitz believes that the university is trying to keep him off campus no matter what—and he's trying to call the university's bluff. Working with students at the university, he's now proposed a new topic for his appearance (academic freedom) and he's willing to appear with someone who will disagree with him in a debate (Cary Nelson, national president of the American Association of University Professors and a strong critic of Horowitz).

Again, however, the university is refusing to allow the event to take place. This time, according to an account posted by Horowitz on his Web site, the university is demanding that a third speaker be added to represent Roman Catholic values, given the university's religious ties. Horowitz says that this requirement for a Catholic perspective is hypocritical, given that the university holds many events that aren't from a Catholic perspective. He cited a recent program on "Living a Muslim Life in a Not-So-Muslim World."

A university spokesman said that the university was "not in direct discussions with Mr. Horowitz," but was talking to students and helping them "achieve their goals." Asked if the university was in fact telling the students that they could bring Horowitz and Nelson to campus only if they also had someone representing Catholic views, the spokesman said that "among other things, having a Catholic perspective was part of the discussion."

He also said: "Saint Louis University has a long history of encouraging a diversity of ideas, opinions and voices on its campus. Any suggestion to the contrary is simply not true."

In an interview, Nelson confirmed that he had agreed to appear with Horowitz. While Nelson has criticized many of Horowitz's views, he has defended his right to appear on campuses and criticized Saint Louis when it barred Horowitz last year.

Nelson believes that colleges should not force student

groups who bring controversial speakers to campus to also bring someone with an opposing view, but he said he was fine appearing at Saint Louis University because Horowitz wanted to propose a debate format. He said the university was wrong to require yet another speaker to join them.

"I think what the university is now trying to do is not so much offensive as completely ludicrous," he said, saying that Saint Louis was acting "as if the keystone cops" were in charge of academic freedom. Reported in: *insidehighered.com*, February 8.

East Stroudsburg, Pennsylvania

Gloria Y. Gadsden, an associate professor of sociology at East Stroudsburg University of Pennsylvania, was escorted off the campus February 24 because of jokes she had made on her Facebook page about wanting to kill students.

On February 22 the professor posted this update: "Had a good day today, didn't want to kill even one student.:-) Now Friday was a different story . . ." In another comment, on January 21, she wrote: "Does anyone know where I can find a very discrete hitman, it's been that kind of day."

A student notified university administrators of the professor's Facebook comments, and officials decided to place the professor on administrative leave while they investigated. "Given the climate of security concerns in academia, the university has an obligation to take all threats seriously and act accordingly," said Marilyn Wells, interim provost and vice president for academic affairs, in a written statement.

However, Gadsden said she believes her suspension stems from a racial-harassment complaint she filed with the university in January and from an op-ed article she wrote for the *Chronicle of Higher Education* in 2008 about the challenges of being a black faculty member. Gadsden said the university and certain colleagues felt attacked by the op-ed, even though she used no names in the article and did not say which institutions she was writing about.

Gadsden said the Facebook comments were a way of venting to family members and friends, who she mistakenly believed were the only ones who could view the postings.

After her opinion piece was published she said she faced disapproval of it on the campus. She said her life was made difficult by administrators, and she encountered so much hostility from one colleague that she filed a racial-harassment complaint with the university.

Gadsden said she had no history of violence, and she thinks that if anyone else had written the same comments, the penalty would have been less severe.

"If it had been one of the more pleasing faculty members, I don't think they would have been suspended," Gadsden said. "I just find it strange that it happened to me around the same time that I filed this racial-harassment complaint." Gadsden said she was now waiting for an investigation to determine her fate at the university. Reported in: *Chronicle of Higher Education* online, February 26.

visas

Chicago, Illinois

Effectively canceling a planned speaking tour, the U.S. consulate in the Netherlands has put an extended hold on the visa application of award-winning Palestinian journalist and photographer Mohammed Omer, scheduled to speak on conditions in Palestine on April 5 in Chicago.

In 2008, Omer became the youngest recipient of the prestigious Martha Gellhorn Prize for Journalism, for his firsthand reportage of life in the besieged Gaza strip. As his prize citation explained, “Every day, he reports from a war zone, where he is also a prisoner. He is a profoundly humane witness to one of the great injustices of our time. He is the voice of the voiceless. . . Working alone in extremely difficult and often dangerous circumstances, [Omer has] reported unpalatable truths validated by powerful facts.”

Upon attempting to return to Gaza following his acceptance of the Gellhorn award in London, Omer was detained, interrogated, and beaten by the Shin Bet Israeli security force for over twelve hours; and eventually hospitalized with cracked ribs and respiratory problems. He has since resided in the Netherlands and continues to undergo medical treatment there for his subsequent health problems.

The U.S. consulate has now held his visa application for an extended period of time, effectively canceling a planned U.S. speaking tour without the explanation that a denial would require. In recent years, numerous foreign scholars and experts have been subject to visa delays and denials that have prohibited them from speaking and teaching in the U.S.—a process the American Civil Liberties Union describes as “Ideological Exclusion,” which they say violates Americans’ First Amendment right to hear constitutionally protected speech by denying foreign scholars, artists, politicians and others entry to the United States.

Foreign nationals who have recently been denied visas include Fulbright scholar Marixa Lasso; respected South African scholar and vocal Iraq War critic Dr. Adam Habib; Iraqi doctor Riyadh Lafta, who disputed the official Iraqi civilian death numbers in the respected British medical journal *The Lancet*; and Oxford’s Tariq Ramadan, who has just received a visa to speak in the United States after more than five years of delays and denials.

Fellow Gellhorn recipient Dahr Jamail, expressed his disbelief at Omer’s visa hold. “Why would the US government, when we consider the premise that we have ‘free speech’ in this country, place on hold a visa for Mohammed Omer, or any other journalist planning to come to the United States to give talks about what they report on? This is a travesty, and the only redemption available for the U.S. government in this situation is to issue Omer’s visa immediately, and with a deep apology.”

Omer was to visit Houston, Santa Fe, and Chicago, where local publisher Haymarket Books was to host his Newberry Library event, “Reflections on Life and War in

Gaza,” alongside a broad set of interfaith religious, community, and political organizations. Reported in: Haymarket Books Press Release, March 18.

copyright

Atlanta, Georgia

Maybe you’re a professor who wants to use a chunk of copyrighted material in your course this spring. Or perhaps you’re a librarian or an academic publisher. If so, the much-followed Google Book Search settlement is not the only legal case you need to be watching. A federal case involving publishers and a state-university system, *Cambridge University Press et al. v. Patton et al.*, should produce a ruling soon, and its stakes are high.

In the spring of 2008, three academic publishers, Cambridge University Press, Oxford University Press, and SAGE Publications, brought a lawsuit against several top administrators at Georgia State University. The plaintiffs claimed that the university was encouraging the unauthorized digital copying and distribution of too much copyrighted material, particularly through its ERes and uLearn systems. ERes allows students to access digital copies of course material via a password-protected Web page; uLearn is a program professors can use to distribute syllabi and reading material.

The three publishers alleged that the unauthorized copying was “pervasive, flagrant, and ongoing.” In February 2009, Georgia State put in place a revised copyright policy, including a checklist for faculty members to help them decide whether the amount of material they wanted to copy exceeded fair use.

A ruling in favor of the publishers could put an end to most library e-reserves programs and would essentially prohibit the sharing of scholarly publications through course management systems (CMSs) without purchasing a license for each work, each student, each semester.

Almost two years and many depositions later, both sides have filed briefs asking for a summary judgment in the case.

Legal briefs are a dry genre, but these tussle over some of the central questions of fair use in an academic context: How much is too much when it comes to copying rights-protected content without permission? To what extent is it the institution’s job to shepherd its professors and students through the thorny complexities of copyright?

The publishers’ filing attacks what it calls the university’s “blanket presumption of ‘fair use’” in a higher-education context. The filing goes after the university’s new fair-use checklist and copyright policy, saying that it “delegates the responsibility for ensuring copyright compliance entirely to faculty unschooled in copyright law.”

The plaintiffs quote from the depositions of several Georgia State professors who acknowledge that they are

not always clear on the copyright issues at stake. (“This is outside of my area of expertise,” one is quoted as saying.) The publishers want the university to use the Copyright Clearance Center’s licensing system or something like it for course materials.

The defendants take a strict we-didn’t-do-it view. Their brief argues that “any alleged unlawful reproduction, distribution, or improper use was actually done by instructors, professors, students, or library employees.”

Georgia State’s filing also argues that the new copyright policy has drastically reduced the use of the plaintiffs’ copyrighted material. It agrees with the plaintiffs that the defendants have no budget for permissions fees and that “faculty members would decline to use works like those at issue if there was an obligation to pay permissions fees.”

So on one side you have a set of major academic publishers understandably eager to protect revenue, and on the other side you have a university that says it doesn’t promote copyright infringement and doesn’t have the money to pay a lot of permissions fees. One implication (threat?) one could draw is that if professors can’t use what they need at no charge, they will probably use something else.

Kevin L. Smith, the scholarly-communications officer at Duke University, helps scholars sort out copyright complexities—a function that is becoming ever more essential in university life, as this case makes very clear—has written about the GSU case on his blog. He says that for the moment, publishers appear unwilling to go after individual professors.

“These faculty members are the same people who provide the content that university presses publish, so it would be really self-defeating,” Smith explained. “It would also be an endless game of ‘whack-a-mole.’ They would prefer a broad judgment against a university.”

In any case, the Duke expert said, a fair-use case like this deserves more than a summary judgment. This case cuts to the heart of how many professors choose course material now and how students use it. Summary judgment or not, Smith said, “I think faculty and administrators should be very concerned.” Reported in: *Chronicle of Higher Education* online, March 14; *Library Journal*, April 1.

comic books

Des Moines, Iowa

A U.S. comic book collector has been sentenced to six months in prison after pleading guilty to importing and possessing Japanese manga books depicting illustrations of child sex and bestiality. Christopher Handley was sentenced in Des Moines on February 11, almost a year after pleading guilty to charges of possessing “obscene visual representations of the sexual abuse of children.”

The 40-year-old was charged under the 2003 Protect Act, which outlaws cartoons, drawings, sculptures or

paintings depicting minors engaging in sexually explicit conduct, and which lack “serious literary, artistic, political, or scientific value.” Handley was the nation’s first to be convicted under that law for possessing cartoon art, without any evidence that he also collected or viewed genuine child pornography.

Without a plea deal with federal authorities, he faced a maximum 15-year sentence.

Comic fans were outraged, saying jailing someone over manga does not protect children from sexual abuse. “I’d say the anime community’s reaction to this, since day one, has been almost exclusively one of support for Handley and disgust with the U.S. courts and legal system,” Christopher MacDonald, editor of Anime News Network, said.

Congress passed the Protect Act after the Supreme Court struck down a broader law prohibiting any visual depictions of minors engaged in sexual activity, including computer-generated imagery and other fakes. The high court ruled that the ban was too broad, and could cover legitimate speech, including Hollywood productions. In response, the Protect Act narrows the prohibition to cover only depictions that the defendant’s community would consider “obscene.”

The case began in 2006, when customs officials intercepted and opened a package from Japan addressed to Handley. Seven books of manga inside contained cartoon drawings of minors engaged in sexually explicit acts and bestiality.

The Anime News Network says the seven books are:

- *Mikansei Seifuku Sho-jo (Unfinished School Girl)* by Yuki Tamachi (LE Comics)
 - *I [Heart] Doll* by Makafusigi (Seraphim Comics)
 - *Kemono for ESSENTIAL 3 (THE ANIMAL SEX ANTHOLOGY Vol.3)* by Masato Tsukimori et al (Izumi Comics)
 - *Otonari Kazoku (Neighboring House Family)* by Nekogen (MD Comics)
 - *Eromon* by Makafusigi (Seraphim Comics)
 - *Kono Man_ ga Sugoi! (This Man_ is Awesome!)* by Makafusigi (Seraphim Comics)
 - *Hina Meikyu- (Doll Labyrinth)* by Makafusigi (Seraphim Comics)
- Reported in: wired.com, February 12.

libel

New York, New York

A law professor at New York University faces trial in a French criminal court in June on libel charges, after refusing to purge an academic book review from a Web site affiliated with a law journal that he edits.

Joseph Weiler, editor-in-chief of the *European Journal of International Law*, is being sued by Karin Calvo-Goller, a senior lecturer at the Academic Centre of Law and Business in Israel, for a review of her book, *The Trial Proceedings*

of the International Criminal Court. The review was published on the Web site in 2007.

Soon after it appeared, Calvo-Goller wrote to Weiler, saying that the review, by Thomas Weigend, director of the Cologne Institute of Foreign and International Criminal Law and dean of the faculty of law at the University of Cologne, was defamatory. She asked that the review be removed from the site.

"Prof. Weigend's review goes beyond the expression of an opinion, fair comment, and criticism," she wrote in correspondence reproduced in an editorial on "Book Reviewing and Academic Freedom" that Weiler has written for the current issue of the *European Journal of International Law*. She deemed the review "libelous," saying it could "cause harm to my professional reputation and academic promotion," and provided an example of a positive review the book had received from another German professor.

Weiler refused to remove the review but offered to publish a response from Calvo-Goller, "so that anyone reading the review would immediately be able to read her reply," an approach that "would have amply and generously vindicated all possible interests of the author of the book," he wrote in the editorial. "I continue to believe that in all the circumstances of the case ... removing the review by Professor Weigend would have dealt a very serious blow to notions of freedom of speech, free academic exchange, and the very important institution of book reviewing."

Faced with what he notes is "the heavy financial burden of defending such a case—expenses which are in large part not recoverable even if acquitted," Weiler has appealed for "moral and material assistance" from the academic community and writes that he is optimistic that he will be acquitted at trial. "Any other result will deal a heavy blow to academic freedom and change the landscape of book reviewing in scholarly journals, especially when reviews have a cyber presence as is so common today." Reported in: *Chronicle of Higher Education* online, February 25.

privacy

Palo Alto, California

Facebook users are expressing strong disapproval of proposed privacy changes that will let the site share some user information with third-party Web sites and applications.

Under Facebook's current rules you're asked first if you want to share information (your name, photos and friends list) with third-party sites. The proposed policy, which Facebook hasn't implemented yet, would bypass asking you for approval when visiting some sites and applications Facebook has business relationships with, sharing limited personal information automatically.

In other words, if Facebook deems a Web site or application trustworthy, it'll immediately grab your information

when you visit or use it, provided you're logged into Facebook when that happens. Users will be able to opt-out, but it's not clear if this would happen on a user's settings page or by some other means. Facebook didn't get into specifics on when these changes will be made, why they're happening now or which sites will be participating.

There are more than 900 comments on the blog post in which Facebook Deputy General Counsel Michael Richter announced the proposed changes. Most of them are negative (though more than 2000 people "like" the blog post itself). Users are particularly angry that the third-party data sharing is opt-out, meaning users will take part by default.

"Don't be evil," Scott Allan Wallick wrote. "Or if you do have to be evil, at least make the evil opt in and not the other way around."

"Has Facebook compared the projected revenue gained from this proposed change to the projected revenue *lost* by the number of users (including myself) that will be driven away?" wrote Nick Williams.

"Why isn't opt-in the default for all public disclosure of information? The next time Facebook changes its policy from opt-in to opt-out, I'll be gone," wrote David Jasinski.

Facebook users are understandably sensitive about what the site does with their personal data. In 2007, the site got into hot water over Beacon, which logged user activity on third-party sites even when they weren't logged into Facebook, and optionally published that activity to users' profiles. That resulted in a \$9.5 million lawsuit settlement last December. This proposal differs from Beacon in that the user must be logged into Facebook to share data, and there's no indication that Facebook will log or publish what you do on those sites.

Facebook also retooled user privacy settings in December in hopes that people would make parts of their profiles public. That effort backfired when users realized their friends lists were made public even when the rest of their profiles were not, causing Facebook to relent and tweak its settings.

If anything, those past examples show that Facebook is willing to bend on privacy when its users get mad enough. Keep in mind that the changes announced by Richter aren't in effect, and the announcement itself was meant to spur feedback from users. Maybe the overwhelming negativity will prompt even more backpedaling from the behemoth of social networking. Reported in: *PC World*, March 29.

Washington, D.C.

Electronic privacy laws are "woefully outdated" and must be revised in a way that balances Americans' rights with law enforcement agencies' needs, Sen. Patrick Leahy (D-VT) said February 12. As the Justice Department heads to court to defend its right to tap cell phone locations, Leahy

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SUCCESS STORIES —



libraries

Norwalk, Connecticut

School administrators decided in February that a controversial novel for young adults would keep its place in the Ponus Ridge Middle School library. Lauren Myracle's 2004 novel *TTYL* drew concern from Norwalk parent Matthew Surapine, who filed a written motion last December challenging the book to a board review.

The five-member administrative committee voted unanimously in favor of keeping the book in the library, where students will continue to have restriction-free access to it, said Ponus Ridge Principal Linda Sumpter.

"The decision was based on several factors, most importantly is the belief that a library should provide books that meet a wide-range of ages and interests," said Sumpter. "We felt the book adequately represented the challenges facing adolescents and the consequences of those actions."

TTYL is about three teenage girls and the problems they face as high school sophomores. It first gained attention in 2004 as the first book written entirely in the format of instant messaging—the title itself is a shorthand reference for "talk to you later."

While many critics decry its style as "grammatically incorrect," most who take exception point to its foul language, sexual content and questionable teenage behavior. Surapine originally brought the issue to the attention of the Norwalk Board of Education after his seventh-grade daughter brought the book home from her school's library.

Board members appeared uncomfortable as Surapine read aloud several racy excerpts from the book that

addressed female ejaculation and an inappropriate relationship between a 15-year-old student and her teacher. Surapine's objection was far from unique. The novel made the American Library Association's Top 10 List of Frequently Challenged Books in 2007 and again in 2008.

While *TTYL* has drawn criticism, it has also been the subject of positive review from reputable critics, such as the *School Library Journal* and *Publisher's Weekly*, who praised the book for its creative approach to addressing the tough issues facing teens.

Sumpter said the overwhelming literary support for *TTYL* played a large role in the committee's decision to keep the book at Ponus Ridge. The lengthy review process also got the committee thinking, she said. "It brought us to realize that we need to do some work in the area of making sure parents understand our library collection," adding that she encouraged all middle schools in the district to address such a need. Reported in: *The Hour*, February 10.

Fond du Lac, Wisconsin

A young-adult book challenged by a Fond du Lac parent will remain on the library shelf at Theisen Middle School. A reconsideration committee of the Fond du Lac School District voted unanimously February 18 to keep available for students the book titled *One of Those Hideous Books Where the Mother Dies*.

Parent Ann Wentworth, who had requested the book be removed because of what she viewed as sexually explicit, age-inappropriate content, said she was disappointed with the committee's decision. "Ultimately I'd like to see a policy change in how (school) literature is selected," she said.

Wentworth's request reached the ears of Sonya Sones, the award-winning author of the book. In a letter written to the school district and read at the meeting by Superintendent Jim Sebert, Sones stated: "If Ms. Wentworth thinks the book is inappropriate for her own child, then by all means she should not allow her child to read it. But it would be unfair and inappropriate for her to try to force her own personal beliefs on every family with children attending Theisen Middle School, or any other school in the district."

Sones added later in her letter, "As Clare Booth Luce so eloquently put it, 'Censorship, like charity, should begin at home; but unlike charity, it should end there.'"

Wentworth said she will go ahead with the process to request removal of six other books from the Theisen library, including the *Sisterhood of the Traveling Pants* series, another set of books by Sones, and *Get Well Soon* by Julie Halpern.

Fond du Lac Public Library Director Ken Hall, who serves on the reconsideration committee, said to prejudge a book and remove it from a library takes away the rights of others. "I found it to be a sweet book, something I felt a reluctant reader would read," he said. "I could never vote to say we must protect all families from this."

About 36 people attended the reconsideration meeting held at Fond du Lac High School. Of the 36, 10 people signed up to speak. Taxpayer and Theisen parent Will Jewson said "moral judgment cannot be formed on subjects inaccessible.

"It is my perspective that the role of schools is to provide for our youth a wide range of educational opportunities offering various and diverse perspectives found in literature and to discuss and debate such in a classroom environment," he said.

Other speakers expressed frustration they did not know about a software system in place within school district libraries that allows parents to place restrictions on materials their children can check out. Wentworth said she was not told about the system until a few days ago.

"It should have been communicated with everyone, a full disclosure of existing safeguards if the software system was in place. It doesn't do any good if parents aren't aware of it," said Lori Gneiser.

Committee Chair John Whitsett, coordinator of curriculum and instruction for Fond du Lac Schools, said the Alexandria library software system was "theoretically" up and running on September 1, but some difficulties had to be worked out. Administrators are now comfortable with the system.

Wentworth questioned the mature themes in the book after her 11-year-old daughter, who is in sixth grade, brought the book home from school. "Kids are bombarded from every angle. In the home, parents control the media. Parameters need to be put in place for literature at school," she said.

She pointed out that human growth and development curriculum is closely scrutinized and age-appropriate. Sones' book, she said, may be well-written, but because of its content, belongs in a high school library.

"This is not about censorship," she maintained.

Theisen Librarian Kathy Prestige said she had offered to help Wentworth guide her daughter's reading selections, something that has always been an option for parents. "'It' (sex) is a part of these students' lives and they are talking about it with each other. I can't hand them *The Boxcar Children*. They need (literary) experiences that speak to them," she said.

Eighth-grader Shelly Berg said she was the one who asked the librarian to order *One of Those Hideous Book Where the Mother Dies*. "I like how the author writes. The stories she creates are just like life. Please don't ban the book," the 15-year-old said.

Whitsett said he will start reviewing Wentworth's request forms so the district can start the process on the other six books the parent wants reviewed. Committee members recommended that notices be sent home to parents, informing them of the library's parental system. Reported in: *Oshkosh Northwestern*, February 19.

North Fond du Lac, Wisconsin

A book of poems containing mature subject matter will remain in the combined middle and high school library in the North Fond du Lac School District. A compromise was reached during a Materials Reconsideration meeting March 24 that would allow the poetry book *Paint Me Like I Am* to remain on the shelf provided it has a label designating it as appropriate for high school students. Younger students could also access the book with prior parental permission.

"I am not for banning any books. It's really a matter of labeling certain books so that parents can be aware of what their children are reading," said parent John Larson, who asked the school district to reconsider the book due to mature language.

Larson filed the reconsideration form with the district after he discovered his 11-year-old stepdaughter writing down the lines from the poem "Diary of an Abusive Stepfather." Larson said he had no idea that the child had even checked out the book and wondered how she could have obtained a book like that from a school library.

Library/Media Specialist Sue Huck said the book containing poems written by at-risk, inner-city youths for a literacy project hasn't drawn much attention from students. She said the book was checked out only once this year and three times last year. She said the book was part of a comprehensive collection of poetry books for a literature project for another class.

Members of the ad hoc reconsideration committee provided input on the book, many of them asking that the book remain in the library and that students continue to have access to it.

"I have to admit that I was a bit startled by the poem, but I thought it was a true-to-life experience and that it might reach a student that doesn't realize that someone else may be going through the same situation," said Hilarie Mukavitz, staff member at Friendship Learning Center. "I thought it was pretty mature, but at the same time, I think it should stay on the shelf."

Larson expressed his frustration that the publishing industry has no governing standards in place to warn readers of potentially objectionable content. "The music industry posts warning labels on music, and movies follow a ratings system, why can't books have similar standards," Larson said. "I'm against censorship, but what I am for is having (books) be identified as age appropriate."

Huck noted that the book could be marked with a sticker deeming it appropriate for high school-age students. However, younger students wishing to access the book would have the opportunity to seek parental permission to read the book.

"We already have an informal process in place in which parents can sign permission slips allowing their child to check out a particular book. It's a way for parents to have some control," Huck said. "We also have the ability in our

software to make notes on students' accounts if parents don't want them to have certain books."

Larson said he was satisfied with the committee's recommendation to identify the book as appropriate for older students. "I'm happy with the outcome and have no plans to appeal," Larson said. Reported in: fdlreporter.com, March 25.

university

Louisville, Kentucky

On February 22 at the University of Louisville, an unusual art exhibit called The Century Project opened as part of a week of activities designed to promote healthy body image. Because the project features photographs of nude women and girls, the university faced pressure to call off or adjust the exhibit, as the University of North Carolina at Wilmington did last year, when it removed the images of girls as a condition of allowing the program to proceed. But Louisville declined to demand changes and stood behind the exhibit, saying that its message has been distorted by critics and that principles of free speech and academic freedom are at stake.

Shirley Willihnganz, provost at Louisville, said that she was approached by people in the local community and by state legislators angry about the exhibit. And she said that while she is happy to explain the context of the exhibit, she is not willing to cancel it or to order its modification.

"I don't know what else to do it but talk to people," she said. But she added that part of what she explains is that "the core of the university is the idea of freedom of expression and freedom of speech."

Critics, galvanized by a professor at Oklahoma State University, say that the exhibit exploits women and girls and encourages violence against women—charges vehemently denied by the photographer and the university.

The Century Project consists of more than 100 nude photographs of women and girls of all ages, accompanied by their stories. The statements deal with the women's lives and bodies. The project's Web site says that one of its goals "is to effect change in societal attitudes towards women's bodies. Its method is to give voice to women through pictures and words, which project, among much else, courage, vulnerability, strength, diversity, multiplicity, and uniqueness."

The most controversial part of the touring exhibit is the inclusion of young girls. Frank Cordelle, the photographer, explains on his Web site that all girls are only photographed with both their consent and that of a parent, and that they report that their inclusion was a positive experience for them.

The leading opponent of the exhibit is John D. Foubert, an associate professor of college student development at Oklahoma State University and a consultant on college

and other programs to prevent rape. Foubert has created a Facebook group and some publicity about the exhibit, and that in turn has led some conservative groups and legislators in Kentucky to protest.

In an interview, Foubert acknowledged that the photographs in the exhibit are "legally not child porn." But he said that wasn't the key question. "This is about full frontal nude pictures of children. What is the educational value of showing nude 12-year-olds on their campus, and how is that helpful?"

Foubert said that extensive studies show that exposure to pornography can encourage men to rape or exploit women. Asked why that research was relevant, given that these photographs are not pornographic, he said that some of the studies weren't based on extreme pornography but that of the sort published in *Playboy*. And while many viewers might think these photographs are unlikely to turn up in *Playboy*, he said that what matters is the image of those photographed "in the eye of the beholder," who in this case could be a male Louisville student.

"You have men walking through this exhibit, looking at pictures of women and girls. What goes on in their head when they look at these pictures?" Foubert asked. "How does this affect what they look at and fantasize about?"

A self-described "controversial academic," Foubert said he believes in free expression. "I'm a strong proponent of the First Amendment. I'm using those rights to bring attention to how they are abusing children. It is because of my First Amendment right that I can speak out about what they are doing," he said. Foubert said he wouldn't protest someone giving a lecture about the photographs, but that showing the photographs shouldn't be viewed as free expression.

"What people don't understand is that there are limits on free speech. You can't make threats against someone else," he said. "They are threatening the safety of their own students by bringing this exhibit."

Willihnganz, the provost, rejected all of the talk that the show is exploitative or pornographic, and she noted that a previous showing at the university yielded "positive reactions."

She said that "if you take out the context, it sounds horrible and I can understand how people would be upset and uncomfortable, but this is part of a week about helping women develop more positive self-images about their bodies," she said. "This is not about objectifying women," but about telling their stories. "This is about as opposite of pornography as you can get. This is about women coming to terms with their bodies."

And Willihnganz noted that while the discussion may be awkward for some, institutions that have censored some of the images have also had awkward discussions. Blocking some or all of the exhibit, she noted, does not make the controversy or the issues go away. Reported in: insidehighered.com, February 22. □

"We are adding balance," said Dr. Don McLeroy, a dentist and leader of the conservative faction on the board, after the vote. "History has already been skewed. Academia is skewed too far to the left."

Battles over what to put in science and history books have taken place for years in the twenty states where state boards must adopt textbooks, most notably in California and Texas. But rarely in recent history has a group of conservative board members left such a mark on a social studies curriculum.

The cultural roots of the Texas showdown may be said to date to the late 1980s, when, in the wake of his failed presidential effort, the Rev. Pat Robertson founded the Christian Coalition partly on the logic that conservative Christians should focus their energies at the grass-roots level. One strategy was to put candidates forward for state and local school-board elections—Robertson's protégé, Ralph Reed, once said, "I would rather have a thousand school-board members than one president and no school-board members"—and Texas was a beachhead.

Since the election of two Christian conservatives in 2006, there are now seven on the Texas state board who are quite open about the fact that they vote in concert to advance a Christian agenda. "They do vote as a bloc," Pat Hardy, a board member who considers herself a conservative Republican but who stands apart from the Christian faction, said. "They work consciously to pull one more vote in with them on an issue so they'll have a majority."

Efforts by Hispanic board members to include more Latino figures as role models for the state's large Hispanic population were consistently defeated, prompting one member, Mary Helen Berlanga, to storm out of a meeting saying, "They can just pretend this is a white America and Hispanics don't exist."

"They are going overboard, they are not experts, they are not historians," she said. "They are rewriting history, not only of Texas but of the United States and the world."

McLeroy makes no bones about the fact that his professional qualifications have nothing to do with education. "I'm a dentist, not a historian," he said. "But I'm fascinated by history, so I've read a lot." Indeed, dentistry is only a job for McLeroy; his real passions are his faith and the state board of education. He has been a member of the board since 1999 and served as its chairman from 2007 until he was demoted from that role by the State Senate last May because of concerns over his religious views.

The curriculum standards will now be published in a state register, opening them up for thirty days of public comment. A final vote will be taken in May, but given the Republican dominance of the board, it is unlikely that many

changes will be made.

The standards, reviewed every decade, serve as a template for textbook publishers, who must come before the board next year with drafts of their books. The board's makeup will have changed by then because McLeroy lost in a March 2 primary to a more moderate Republican, and two others—one Democrat and one conservative Republican—announced they were not seeking re-election.

There are seven members of the conservative bloc on the board, but they are often joined by one of the other three Republicans on crucial votes. There were no historians, sociologists or economists consulted at the meetings, though some members of the conservative bloc held themselves out as experts on certain topics.

The conservative members maintain that they are trying to correct what they see as a liberal bias among the teachers who proposed the curriculum. To that end, they made dozens of minor changes aimed at calling into question, among other things, concepts like the separation of church and state and the secular nature of the American Revolution.

"I reject the notion by the left of a constitutional separation of church and state," said David Bradley, a conservative from Beaumont who works in real estate. "I have \$1,000 for the charity of your choice if you can find it in the Constitution."

They also included a plank to ensure that students learn about "the conservative resurgence of the 1980s and 1990s, including Phyllis Schlafly, the Contract With America, the Heritage Foundation, the Moral Majority and the National Rifle Association."

McLeroy pushed through a change to the teaching of the civil rights movement to ensure that students study the violent philosophy of the Black Panthers in addition to the nonviolent approach of the Rev. Dr. Martin Luther King Jr. He also made sure that textbooks would mention the votes in Congress on civil rights legislation, which Republicans supported.

"Republicans need a little credit for that," he said. "I think it's going to surprise some students."

Bradley won approval for an amendment saying students should study "the unintended consequences" of the Great Society legislation, affirmative action and Title IX legislation. He also won approval for an amendment stressing that Germans and Italians as well as Japanese were interned in the United States during World War II, to counter the idea that the internment of Japanese was motivated by racism.

Other changes seem aimed at tamping down criticism of the right. Conservatives passed one amendment, for instance, requiring that the history of McCarthyism include "how the later release of the Venona papers confirmed suspicions of communist infiltration in U.S. government." The Venona papers were transcripts of some 3,000 communications between the Soviet Union and its agents in the United States.

Mavis B. Knight, a Democrat from Dallas, introduced an amendment requiring that students study the reasons “the founding fathers protected religious freedom in America by barring the government from promoting or disfavoring any particular religion above all others.” It was defeated on a party-line vote.

After the vote, Knight said, “The social conservatives have perverted accurate history to fulfill their own agenda.”

In economics, the revisions add Milton Friedman and Friedrich von Hayek, two champions of free-market economic theory, among the usual list of economists to be studied, like Adam Smith, Karl Marx and John Maynard Keynes. They also replaced the word “capitalism” throughout their texts with the “free-enterprise system.”

“Let’s face it, capitalism does have a negative connotation,” said one conservative member, Terri Leo. “You know, ‘capitalist pig!’”

In the field of sociology, another conservative member, Barbara Cargill, won passage of an amendment requiring the teaching of “the importance of personal responsibility for life choices” in a section on teenage suicide, dating violence, sexuality, drug use and eating disorders. “The topic of sociology tends to blame society for everything,” Cargill said.

Even the course on world history did not escape the board’s scalpel. Cynthia Dunbar, a lawyer from Richmond who is a strict constitutionalist and thinks the nation was founded on Christian beliefs, managed to cut Thomas Jefferson from a list of figures whose writings inspired revolutions in the late 18th century and 19th century, replacing him with St. Thomas Aquinas, John Calvin and William Blackstone. (Jefferson is not well liked among conservatives on the board because he coined the term “separation between church and state.”)

“The Enlightenment was not the only philosophy on which these revolutions were based,” Dunbar said.

With some parents and educators elsewhere leery of a right-wing fifth column invading their schools, people in the multibillion textbook industry try to play down Texas’s sway. “It’s not a given that Texas’ curriculum translates into other states,” says Jay Diskey, executive director of the school division for the Association of American Publishers, which represents most of the major companies.

But Tom Barber, who worked as the head of social studies at the three biggest textbook publishers before running his own editorial company, says, “Texas was and still is the most important and most influential state in the country.” And James Kracht, a professor at Texas A&M’s college of education and a longtime player in the state’s textbook process, told me flatly, “Texas governs 46 or 47 states.”

Every year for the last few years, Texas has put one subject area in its TEKS up for revision. Each year has brought a different controversy. Last year, in its science

re-evaluation, the board lunged into the evolution/creationism/intelligent-design debate. The conservative Christian bloc wanted to require science teachers to cover the “strengths and weaknesses” of the theory of evolution, language they used in the past as a tool to weaken the rationale for teaching evolution. The battle made headlines across the country; ultimately, the seven Christian conservatives were unable to pull another vote their way on that specific point, but the finished document nonetheless allows inroads to creationism.

“It’s the 21st century, and the rest of the known world accepts the teaching of evolution as science and creationism as religion, yet we continue to have this debate here,” Kathy Miller, president of the Texas Freedom Network, a watchdog group, says. “So the eyes of the nation were on this body, and people saw how ridiculous they appeared.”

The State Legislature felt the ridicule. “You have a point of view, and you’re using this bully pulpit to take the rest of the state there,” Eliot Shapleigh, a Democratic state senator, admonished McLeroy during the hearing that led to his ouster as chair of the board.

Christian activists argue that American-history textbooks basically ignore religion—to the point that they distort history outright—and mainline religious historians tend to agree with them on this. “In American history, religion is all over the place, and wherever it appears, you should tell the story and do it appropriately,” says Martin Marty, emeritus professor at the University of Chicago, past president of the American Academy of Religion and the American Society of Church History and perhaps the unofficial dean of American religious historians. “The goal should be natural inclusion. You couldn’t tell the story of the Pilgrims or the Puritans or the Dutch in New York without religion.”

Though conservatives would argue otherwise, James Kracht said the absence of religion is not part of a secularist agenda: “I don’t think religion has been purposely taken out of U.S. history, but I do think textbook companies have been cautious in discussing religious beliefs and possibly getting in trouble with some groups.”

In the new guidelines, students taking classes in U.S. government are asked to identify traditions that informed America’s founding, “including Judeo-Christian (especially biblical law),” and to “identify the individuals whose principles of law and government institutions informed the American founding documents,” among whom they include Moses.

The idea that the Bible and Mosaic law provided foundations for American law has taken root in Christian teaching about American history. So when Steven K. Green, director of the Center for Religion, Law and Democracy at Willamette University in Salem, Ore., testified at the board meeting last month in opposition to the board’s approach to bringing religion into history, warning that the Supreme

Court has forbidden public schools from “seeking to impress upon students the importance of particular religious values through the curriculum,” and in the process said that the founders “did not draw on Mosaic law, as is mentioned in the standards,” several of the board members seemed dumbstruck.

The process in Texas required that writing teams, made up mostly of teachers, do the actual work of revising the curriculum, with the aid of experts who were appointed by the board. Two of the six experts the board chose are well-known advocates for conservative Christian causes. One of them, the Rev. Peter Marshall, says on the Web site of his organization, Peter Marshall Ministries, that his work is “dedicated to helping to restore America to its Bible-based foundations through preaching, teaching and writing on America’s Christian heritage and on Christian discipleship and revival.”

“The guidelines in Texas were seriously deficient in bringing out the role of the Christian faith in the founding of America,” Marshall said. In a document prepared for the team that was writing the new guidelines, he urged that new textbooks mold children’s impressions of the founders in particular ways: “The Founding Fathers’ biblical worldview taught them that human beings were by nature self-centered, so they believed that the supernatural influence of the Spirit of God was needed to free us from ourselves so that we can care for our neighbors.”

The other nonacademic expert, David Barton, is the nationally known leader of WallBuilders, which describes itself as dedicated to “presenting America’s forgotten history and heroes, with an emphasis on our moral, religious and constitutional heritage.” Barton has written and lectured on the First Amendment and against separation of church and state. He is a controversial figure who has argued that the U.S. income tax and the capital-gains tax should be abolished because they violate Scripture (for the Bible says, in Barton’s reading, “the more profit you make the more you are rewarded”) and who pushes a Christianity-first rhetoric. When the U.S. Senate invited a Hindu leader to open a 2007 session with a prayer, he objected, saying: “In Hindu [sic], you have not one God, but many, many, many, many, many gods. And certainly that was never in the minds of those who did the Constitution, did the Declaration when they talked about Creator.”

In his recommendations to the Texas school board, Barton wrote that students should be taught the following principles which, in his reading, derive directly from the Declaration of Independence: “1. There is a fixed moral law derived from God and nature. 2. There is a Creator. 3. The Creator gives to man certain unalienable rights. 4. Government exists primarily to protect God-given rights to every individual. 5. Below God-given rights and moral laws, government is directed by the consent of the governed.”

A third expert, Daniel L. Dreisbach, a professor of

justice, law and society at American University who has written extensively on First Amendment issues, stressed, in his recommendations to the guideline writers about how to frame the revolutionary period for students, that the founders were overwhelmingly Christian; that the deistic tendencies of a few—like Jefferson—were an anomaly; and that most Americans in the era were not just Christians but that “98 percent or more of Americans of European descent identified with Protestantism.”

Ask Christian activists what they really want—what the goal is behind the effort to bring Christianity into American history—and they say they merely want “the truth.” “The main thing I’m looking for as a state board member is to make sure we have good standards,” McLeroy said. But the actual ambition is vast. Americans tell pollsters they support separation of church and state, but then again 65 percent of respondents to a 2007 survey by the First Amendment Center agreed with the statement that “the nation’s founders intended the United States to be a Christian nation,” and 55 percent said they believed the Constitution actually established the country as a Christian nation.

What is wrong with the Texas process, according to many observers, is illustrated by the fate of Bill Martin Jr. *Brown Bear, Brown Bear, What Do You See?* is not an especially subversive-sounding title, but Martin, the author of this 1967 children’s picture book, lost his place in the Texas social-studies guidelines due to what was thought to be un-American activity—to be precise, “very strong critiques of capitalism and the American system.”

Martin, the creator of 300 children’s books, was removed from the list of cultural figures approved for study by third graders in the blizzard of amendments offered by board members.

Overall, the TEKS guidelines make for impressive reading. They are thoughtful and deep; you can almost feel the effort at achieving balance. Poring down the long columns and knowing that the 1998 version of these guidelines served as the basis for textbooks in most U.S. states, you even begin to feel some hope for the future.

The board has the power to accept, reject or rewrite the TEKS, and over the past few years, in language arts, science and now social studies, the members have done all of the above. Yet few of these elected overseers are trained in the fields they are reviewing. “In general, the board members don’t know anything at all about content,” Tom Barber, the textbook executive, says.

Kathy Miller, the watchdog, who has been monitoring the board for 15 years, says, referring to Don McLeroy and another board member: “It is the most crazy-making thing to sit there and watch a dentist and an insurance salesman rewrite curriculum standards in science and history. Last year, Don McLeroy believed he was smarter than the National Academy of Sciences, and he now believes he’s smarter than professors of American history.”

In this case, one board member sent an e-mail message

with a reference to “Ethical Marxism,” by Bill Martin, to another board member, who suggested that anyone who wrote a book with such a title did not belong in the TEKS. As it turned out, Bill Martin and Bill Martin Jr. are two different people. But by that time, the author of *Brown Bear, Brown Bear* was out. “That’s a perfect example of these people’s lack of knowledge,” Miller says. “They’re coming forward with hundreds of amendments at the last minute. Don McLeroy had a four-inch stack of amendments, and they all just voted on them, whether or not they actually knew the content. What we witnessed in January was a textbook example of how not to develop textbook standards.”

Before the January board meeting, one of the social-studies curriculum writers, Judy Brodigan, told a reporter that she was very pleased with the guidelines her team produced. After the meeting, with its 10-hour marathon of amendments by board members, she spoke very differently. “I think they took a very, very good document and weakened it,” she said. “The teachers take their work seriously. I do believe there are board members on the ultralight who have an agenda. They want to make our standards very conservative and fit their viewpoint. Our job is not to take a viewpoint. It’s to present sides fairly. I thought we had done that.”

Once the standards are approved the battle is likely to move behind the scenes. Tom Barber, the textbook executive, explained that in the next stage in the Texas process, general guidelines are chiseled into fact-size chunks in crisp columns of print via backroom cajoling. “The process of reviewing the guidelines in Texas is very open, but what happens behind the scenes after that is quite different,” Barber says. “McLeroy is kind of the spokesman for the social conservatives, and publishers will work with him throughout. The publishers just want to make sure they get their books listed.”

Indeed, McLeroy has been frank in talking about how he applies direct pressure to textbook companies. In the language-arts re-evaluation, the members of the Christian bloc wanted books to include classic myths and fables rather than newly written stories whose messages they didn’t agree with. They didn’t get what they wanted from the writing teams, so they did an end run around them once the public battles were over.

“I met with all the publishers,” McLeroy said. “We went out for Mexican food. I told them this is what we want. We want stories with morals, not P.C. stories.” He then produced an e-mail message from an executive at Pearson, a major educational publisher, indicating the results of his effort: “Hi Don. Thanks for the impact that you have had on the development of Pearson’s Scott Foresman Reading Street series. Attached is a list of some of the Fairy Tales and Fables that we included in the series.” Reported in: *New York Times*, March 12; *New York Times Magazine*, February 11. □

(censorship dateline . . . from page 110)

magic markers to obscure body parts before mailing some books to a Texas prison. In 2006, censors rejected *The Sistine Chapel Coloring Book*.

In an effort to separate art from child porn, reviewers have come up with a test, Shelby said: If a naked child has clearly visible wings, it is a legitimate cherub and the book can stay. No wings? It must go. “If he is naked, the Baby Jesus would be denied,” she said.

Books that could lead to breaches of security and order also are denied entrance to state prisons. Publications considered too racially insensitive fall under a ban of “material that a reasonable person would construe as written solely for the purpose of communicating information designed to achieve the breakdown of prisons.”

Many of the rejections—*Fun Under the Swastika*—seem reasonable: Race-related violence is a real concern in prisons. Yet the prohibition has been applied broadly: *Friday Night Lights*, the best-selling book about Texas high school football, was prohibited because of its exploration of racial themes in Odessa.

In October 2007, censors rejected *Coming Through the Fire*, which was reviewed on Amazon.com: “In this small but eloquent work, Duke University professor of religion and culture C. Eric Lincoln calls for a ‘no-fault reconciliation’ between the races.” The following month, censors approved *The Hitler We Loved and Why*, published by White Power Publications.

Security concerns also have kept educational books out of Texas lockups. *Basic Physics: A Self-Teaching Guide* and *Chemistry Concepts and Problems* were denied for fear inmates might glean potentially dangerous chemical formulas from them, according to rejection notes. Instructional books explaining electric motors, sheet metal fabrication, electrical codes, knot-tying, taxidermy and tanning, guard dog training, radio circuits, home inspections and organic chemistry were also deemed potential security threats, their contents apparently too volatile to risk releasing to Texas’s convicted criminals.

In 2005, prison officials censored *Auto Repair for Dummies*, and in 2007 they rejected *Residential Construction Academy—HVAC*. Among the trades it teaches, Windham, the state’s school district for prisoners, lists auto mechanics, diesel repair and HVAC repair.

By policy, censors also scour volumes for descriptions of weapon and drug manufacturing and “criminal schemes,” categories that have prevented books such as the *Drugs From A to Z Dictionary* and *Guns & Ammo* magazine from prisoners’ cells. But the restrictions have also led to banning the book *How to Get Off Drugs*, magazines about paintball and a how-to manual on rifle engraving.

The potential for aiding escape is another security red

flag, prohibiting not only publications with Texas maps but also *Austin American-Statesman* humor columnist John Kelso's book of roadside oddities, for what the author describes as unhelpful depictions of Texas terrain. "I suppose they could use it to run away to the Spamarama," Kelso said.

In 2005, Jim Willett, a retired warden of the agency's Huntsville unit, published a book about his experiences. Two years later, his former employer censored *Warden* because, the reviewers explained, "arial (sic) photos of prisons could facilitate an escape."

Censors also have taken an expansive view of publications that might give inmates a dangerous advantage over corrections officers. While it's easy to understand why a copy of *How to Be An Ass-Whipping Boxer* circulating among angry prisoners could cause unease, it is less clear why *Draw Fight Scenes Like a Pro* was rejected for revealing "fighting techniques."

In December, prison censors intercepted *The Elements of Persuasion: Use Storytelling to Pitch Better, Sell Faster and Win More Business*, which, after reading, they turned away as a security concern.

The danger? "Could be used to persuade others." Reported in: *Austin American-Statesman*, January 30. □

(from the bench . . . from page 118)

government line," she said. "That lack of understanding is enormously troubling." Reported in: insidehighered.com, March 18.

Dayton, Ohio

Breaking ranks with several other federal judges who have recently considered the question, a U.S. magistrate judge held in March that the First Amendment protects job-related statements made by faculty members of public colleges. The case at hand involved a physician, Elton R. Kerr, who has accused his former boss at Wright State School of Medicine, William R. Hurd, of wrongly moving to discipline him in his capacity as a professor of obstetrics and gynecology for teaching certain techniques and procedures against Dr. Hurd's wishes.

In asking the judge to dismiss Dr. Kerr's claim that his First Amendment rights had been violated, lawyers for

Dr. Hurd argued that the Supreme Court's 2006 *Garcetti v. Ceballos* decision left Dr. Kerr accountable to his employers for speech made in connection with his job. U.S. Magistrate Judge Michael R. Mertz rejected the idea that the *Garcetti* ruling, which upheld the disciplining of a deputy district attorney for job-related statements, should be applied to speech in an academic setting. The judge's ruling said universities "should be the active trading floors in the marketplace of ideas." Reported in: *Chronicle of Higher Education* online, March 22.

national security

Washington, D.C.

A federal judge on March 31 ruled that the National Security Agency's warrantless surveillance program was illegal, rejecting the Obama administration's effort to keep shrouded in secrecy one of the most disputed counter-terrorism policies of former President George W. Bush.

In a 45-page opinion, Judge Vaughn R. Walker ruled that the government had violated a 1978 federal statute requiring court approval for domestic surveillance when it intercepted phone calls of Al Haramain, a now-defunct Islamic charity in Oregon, and of two lawyers who were representing it in 2004. Declaring that the plaintiffs had been "subjected to unlawful surveillance," the judge said that the government was liable to pay them damages.

The ruling delivered a blow to the Bush administration's claims that its warrantless surveillance program, which Bush secretly authorized shortly after the terrorist attacks of September 11, 2001, was lawful. Under the program, the National Security Agency monitored Americans' e-mail messages and phone calls without court approval, even though the Foreign Intelligence Surveillance Act, or FISA, required warrants.

After the *New York Times* reported on the existence of the program in December 2005, the Bush legal team argued that it was lawful because the president's wartime powers enabled him to override the statute. Jon Eisenberg, a lawyer represented Al Haramain, said Judge Walker's ruling was an "implicit repudiation of the Bush-Cheney theory of executive power."

"Judge Walker is saying that FISA and federal statutes like it are not optional," Eisenberg said. "The president, just like any other citizen of the United States, is bound by the law."

The Justice Department said it was reviewing the decision and had made no decision about whether to appeal it.

The ruling by Judge Walker, the chief judge of the Federal District Court in San Francisco, also rejected the Justice Department's claim—first asserted by the Bush administration and continued under President Obama—that the charity's lawsuit should be dismissed without a ruling

on the merits because allowing it to go forward could reveal state secrets.

The judge characterized that expansive use of the so-called state-secrets privilege as amounting to “unfettered executive-branch discretion” that had “obvious potential for governmental abuse and overreaching.”

That view, he also said, would enable government officials to flout the warrant law—even though Congress had enacted it “specifically to rein in and create a judicial check for executive-branch abuses of surveillance authority.”

A department spokeswoman, Tracy Schmaler, noted that the Obama administration had overhauled the department’s procedures for when to invoke the state secrets privilege, requiring senior officials to personally approve any assertion before lawyers could make it in court. Schmaler said that approach would ensure it is invoked only when “absolutely necessary to protect national security.”

The ruling was the second time a federal judge has declared a program of wiretapping without warrants to be illegal. But a 2006 decision by a Detroit judge, Anna Diggs Taylor, was later reversed on the grounds that the plaintiffs in that case could not prove that they had been wiretapped and so lacked legal standing to sue. Several other lawsuits filed over the program have failed, or been dealt a severe blow, because of similar concerns over standing.

By contrast, the Al Haramain case was closely watched because the government inadvertently disclosed a classified document that made clear that the charity had been subjected to surveillance without warrants.

Although Judge Walker eventually ruled that the plaintiffs could not use that document to prove that they had standing, Eisenberg and six other lawyers working on the case were able to use public source documents—including a 2007 speech by an F.B.I. official who acknowledged that Al Haramain had been placed under surveillance—to prove the wiretapping.

Judge Walker’s opinion cataloged other such evidence and declared that the plaintiffs had shown that they were wiretapped in a manner that required a warrant. He said the government had failed to produce a warrant, so he granted summary judgment in favor of the plaintiffs.

But Judge Walker limited liability in the case to the executive branch as an institution, rejecting any finding of personal liability by government officials, including Robert S. Mueller III, the F.B.I. director.

In 2008, Congress overhauled the Foreign Intelligence Surveillance Act to bring federal statutes into closer alignment with what the Bush administration had been secretly doing. The legislation essentially legalized certain aspects of the warrantless surveillance program.

But the overhauled law still requires the government to obtain a warrant if it is focusing on an individual or entity inside the United States. The surveillance of Al Haramain would still be unlawful today if no court had approved

it, current and former Justice Department officials said. Reported in: *New York Times*, March 31.

confidentiality and privacy

San Francisco, California

A California state judge has rejected a bid by two researchers examining affirmative action to gain access to California Bar Association data on the long-term success of law-school graduates.

Judge Curtis E.A. Karnow of the California Superior Court for San Francisco County ruled in late March that the state bar is not legally obliged to release the data sought by Richard H. Sander, a professor of law at the University of California at Los Angeles, and Joe Hicks, a former governor of the California state bar who is involved in a consortium of affirmative-action researchers organized by Sander. The two men were joined by the California First Amendment Coalition in their lawsuit, which seeks state-bar data on law students broken down by race and ethnicity.

Judge Karnow’s ruling was technically a “proposed statement of decision,” but it was expected to become final after a 15-day period for comment from the lawyers for both sides. The judge held that the researchers’ argument for access to the data under public-records laws relied on a definition of “public document” that was overly broad, and could be interpreted as covering judges’ rough notes, grand-jury transcripts, and other documents that the courts have long held to be exempt.

Sander has generated controversy in the past with research concluding that selective law schools’ race-conscious admission policies set up many minority students for long-term failure. He said that he planned to appeal Judge Karnow’s ruling, which he said was based on an excessively narrow interpretation of the law. “We are not at all disheartened by the lower-court decision,” he said, adding that he predicts the appellate court “will not give it great weight.” Reported in: *Chronicle of Higher Education* online, March 30.

Trenton, New Jersey

A company should not have read e-mails written by a former employee to her lawyer from a private, password-protected web account, even though she sent them from her employer’s computer, according to a New Jersey Supreme Court ruling March 30 that attorneys said could influence workplace privacy rules across the country.

The precedent-setting ruling upheld the sanctity of attorney-client privilege in electronic communications between a lawyer and a nursing manager at the Loving Care Agency. After the manager quit and filed a discrimination and harassment lawsuit against the Bergen County home health

care company in 2008, Loving Care retrieved the messages from the computer's hard drive and used them in preparing its defense.

The unanimous decision by the state's highest court will have broader implications in workplaces, which increasingly rely on e-mail and the Internet, according to litigators on both sides of the case.

Though disappointed that the state's highest court did not rule in Loving Care's favor, the company's attorney and former New Jersey Supreme Court Justice Peter Verniero said the decision will be helpful to companies and employers in the future.

"The court has now clarified an area of law, and any time you have a court clarifying an area of law, it's a positive development," Verniero said. He noted no top court in any other state has yet taken up the issue.

The state's high court found the company's policy regarding e-mail use to be vague and noted it said "occasional personal use is permitted."

"The policy does not address personal accounts at all," the decision said. "The policy does not warn employees that the contents of such e-mails are stored on a hard drive and can be forensically retrieved."

Verniero predicted: "This case will be read by lawyers not only in New Jersey but potentially throughout the United States."

An attorney who filed a friend-of-the-court brief on behalf of Loving Care also praised the court for giving companies some sorely needed guidance. Marvin Goldstein, who represented the Employers Association of New Jersey, said he expects companies will use the decision to rewrite policy manuals on e-mail usage.

"The court has recognized the very legitimate and real concerns with regards to privacy. This gives some guidance to employers in terms of how explicit (e-mail) policies need to be," Goldstein said.

The ruling stemmed from a harassment and discrimination lawsuit Marina Stengart of Bergen County filed three years ago against Loving Care of Ridgefield Park. Stengart, then the executive director of nursing, sent her attorney eight e-mails from her company-loaned laptop about her issues with her superiors. Stengart used her Yahoo e-mail account.

"Under all of the circumstances, we find that Stengart could reasonably expect that e-mails she exchanged with her attorney on her personal, password-protected, web-based e-mail account, accessed on a company laptop, would remain private," Chief Justice Stuart Rabner wrote in the decision, which upholds an appeals court's ruling last year.

"Stengart plainly took steps to protect the privacy of those e-mails and shield them from her employer," Rabner continued. "She used a personal, password protected e-mail account instead of her company e-mail address and did not save the account's password on her computer."

Peter Frazza, Stengart's attorney, said the ruling sets a new boundary for employers who believe they may have a

right to all e-mails simply because they own the computer. "Big Brother is always there, but employees have got to be comforted by the ruling, knowing they are protected," he said. Reported in: nj.com, March 30. □

(*is it legal? . . . from page 126*)

noted many of the laws to be argued before that forum fail to reflect the dawning "Information Age"—a time when new technologies, like BlackBerry phones, create both new opportunities to communicate and new privacy challenges.

He thus promised as chairman of the Senate Judiciary Committee to hold a hearing on those rules before the year's end, and he urged his fellow lawmakers to work with him on later revisions to the Electronic Communications Privacy Act—the guiding document on the matter.

"The use of cell phone locational information impacts Americans across the nation and from every walk of life," Leahy said in a statement. "The question of how best to protect these digital communications, while providing law enforcement with the tools that it needs to keep us safe, has no simple answer."

The renewed focus on electronic privacy laws arrives just as the Justice Department launches its opening arguments in a case that could have serious implications on cell phone data and privacy.

The trial centers on an investigation last year by the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATF). The agency requested to tap suspects' cell phone data to determine where a likely drug deal might occur, but a federal magistrate ruled the bureau lacked sufficient evidence to merit the request.

Ultimately, the judge told the Justice Department it needed a search warrant to obtain those records, and that it had to satisfy strict tests of probable cause to gain access to information that the court deemed incredibly private. However, the Justice Department has since appealed that ruling, claiming users on cell phones have "no reasonable expectation of privacy."

That argument has set off a firestorm of criticism, as many privacy rights groups argue law enforcement agents could obtain location data without customers' consent.

Leahy did not take a side in that still-unfolding case, though his statement hints at the challenges to judges and investigators. "... [W]hat is clear is that our federal electronic privacy laws are woefully outdated," the senator said. "Congress must work with the Justice Department, privacy advocates and the technology industry to update and clarify the law to reflect the realities of our times." Reported in: *The Hill*, February 12. □

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*Intellectual Freedom Committee
American Library Association*

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