newsletter on intellectual freedom

IFC ALA

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Obama orders rollback of government secrecy

President Barack Obama's first public act in office January 21 was to formalize strict new limits on lobbyists operating in his White House and peel back presidential decision-making to allow more public scrutiny.

Another shift toward openness—Obama's instruction to federal agencies to be more responsive to requests made under the Freedom of Information Act—was greeted with praise from government watchdogs.

Obama made several moves aimed at creating what he called "a new standard of openness" about the behind-the-scenes machinations of his White House—and those before it. Chief among them was issuing an order requiring that the White House consult with the attorney general and White House counsel "any time the American people want to know something that I or a former president want to withhold."

"Information will not be withheld just because I say so," Obama said while attending a ceremony in the Eisenhower Executive Office Building to swear in about two dozen of his most senior aides. "It will be withheld because a separate authority believes my request is well grounded in the Constitution."

Obama revoked the executive order issued by President George W. Bush in November 2001, less than two months after the September 11 terrorist attacks, that allowed past presidents to exert executive privilege to keep some of their White House papers private. A federal judge ruled parts of it invalid in 2007, while Obama's order revoked it entirely. Bush's order was viewed as ushering in a new era of presidential secrecy.

Former presidents may ask to have certain documents kept private, but they no longer may compel the National Archives to do so, Obama said. Obama's executive order also makes clear that neither former vice presidents nor relatives of former presidents who have died have authority to keep records private.

Scott Nelson, a Public Citizen lawyer who led the challenge to Bush's order, said researchers should find it easier to gain access to records under the new order. "It's a great signal to send on the president's first day in office," Nelson said.

The Presidential Records Act, passed in 1978, followed Watergate and President Richard Nixon's attempts to hold on to his papers and tape recordings and made presi-

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in this issue

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IFC report to ALA Council

The following is the text of the ALA Intellectual Freedom Committee's Report to the ALA Council, delivered by IFC Chair J. Douglas Archer at the ALA Midwinter Meeting in Denver on January 28.

The ALA Intellectual Freedom Committee (IFC) is pleased to present this update of its activities.

INFORMATION

OIF Director Judith Krug Receives Brennan Award

On January 13, the Thomas Jefferson Center for the Protection of Free Expression announced that OIF Director, Judith F. Krug, will receive the fifth William J. Brennan, Jr. Award. The award recognizes a person or group who has demonstrated a commitment to the principles of free expression consistent with the late U.S. Supreme Court Justice's abiding devotion to the First Amendment. Dr. Krug will receive her award during the Freedom to Read Foundation's 40th Anniversary Gala this July.

Festschrift to Honor Gordon M. Conable

At the 2005 Midwinter Meeting, the Intellectual Freedom Round Table (IFRT), the Freedom to Read Foundation (FTRF), and the IFC began work on a Festschrift to honor Gordon M. Conable. ALA Editions will publish it in March 2009. All proceeds will be donated to the Gordon M. Conable Fund of the Freedom to Read Foundation.

Frontlines Intellectual Freedom Series

In the next few months, ALA Editions will publish the first two volumes of the new Frontlines Intellectual Freedom book series, *Protecting Intellectual Freedom in Your Academic Library*, by Barbara Jones, and *Protecting Intellectual Freedom in Your School Library*, by Pat Scales.

Each book in the Frontlines Intellectual Freedom series contains an introduction to intellectual freedom and more specific materials that address the practical application of intellectual freedom principles in particular library settings. The publications discuss intellectual freedom and privacy concepts via a series of case studies that both illustrate and teach a particular concept. The books are written so that the reader will be able to jump in to the work at any point and find a case study to address a current problem or issue of concern.

The case studies will describe a set of facts and include a discussion of the applicable intellectual freedom principles. Supplemental materials accompanying each case study will provide useful tips, guidelines, sample policies, definitions of key terms, and analysis of important statutes and legal decisions. The books will provide a creative means for providing information useful to front-line library workers or LIS students seeking an introduction to intellectual freedom.

Privacy and Confidentiality Issues: A Guide for Libraries and their Lawyers

ALA Editions recently published *Privacy and Confidentiality Issues: A Guide for Libraries and their Lawyers*, a new publication by Freedom to Read Foundation General Counsel Theresa Chmara. The publication discusses legal policy issues relating to patron privacy and confidentiality that often raise First Amendment questions. It is designed for use by librarians and legal counsel and uses a question and answer format to help libraries and their counsel become familiar with the constitutional rights of patrons so that they can take action to protect users' First Amendment and privacy rights.

The topics addressed by the publication include:

- What First Amendment rights exist in libraries
- How to create a library policy to best protect patrons' confidentiality and privacy
- The appropriate responses to requests for patron records
- How to deal with the nuances of Internet use privacy
- The role of the library as employer

Actual court case studies lend a sense of urgency to the explanations, which provide librarians with the tools they need to defend First Amendment and privacy rights in the libraries.

PROJECTS

National Conversation on Privacy

At the 2006 Annual Conference, ALA Council adopted the "Resolution on National Discussion on Privacy," which urged the Intellectual Freedom Committee to collaborate with other ALA units toward a national conversation about privacy as an American value. To implement this resolution, ALA has initiated a three-year public engagement campaign on information privacy issues in America. With seed grant support from the Open Society Institute, OIF is working with groups within and outside of ALA to develop the conversation on privacy, both in individual communities and within the larger library community as well. The campaign kicked off at the 2008 Annual Conference in Anaheim with the program, "Privacy: Is It Time for a Revolution?," which was the most blogged-about event of the conference. We also conducted a survey of librarian attitudes about privacy issues, which is helping to direct the focus of the campaign.

A beta version of the new Privacy Revolution website (www.privacyrevolution.org) was rolled out at the 2009 Midwinter Meeting. The website will serve as a hub to provide information and tools to help people think criti-

cally and make personal choices about their information privacy, while also allowing them to join a community, share their story, and add their voices to those of others who are passionate about privacy issues. Also at Midwinter, OIF distributed a position paper to outline major privacy issues, and a door hanger proclaiming, "Privacy Please!" was distributed in registration bags to build member interest. OIF seeks feedback on these materials to shape the look and content of the campaign in advance of a soft launch in March 2009. We are also recruiting libraries and librarians to serve as early adopters of the campaign, leading the charge to start the national conversation, and seeking input on an ongoing national event to focus attention on privacy as an American value.

Banned Books Week

2008 marked the 27th anniversary of Banned Books Week, which was held from September 27 through October 4.

For the second year in a row, the week kicked off with a Banned Books Week Read-Out!, held on Saturday, September 27, in Pioneer Plaza, located off Michigan Avenue in Chicago. OIF, the McCormick Freedom Museum, and the *Chicago Tribune* hosted this remarkable event. Hundreds of people joined emcee and ALA Executive Director Keith Michael Fiels, ALA President Jim Rettig, ALA President-Elect Camila Alire and local Chicago celebrities, who read from their favorite banned and challenged books. Several highly acclaimed banned/challenged authors—Judy Blume, Ron Koertge, Stephen Chbosky, Lauren Myracle, Lois Lowry, Phyllis Reynolds-Naylor, Justin Richardson and Peter Parnell—were also in attendance to discuss their experiences as targets of censors and to read from one of their banned or challenged books. In addition to the readings, Matt Ryd, a local musician, performed a selection of banned or censored music and the CityLit Theatre company of Chicago performed dramatic readings of banned and challenged books.

In addition to the Read-Out!, we once again hosted Banned Books Week events in Second Life. All events were located in the Banned Books Sky Platform, a permanent "town square in the air" dedicated to a continued celebration of banned or challenged books and to encouraging Second Life denizens to keep a vigilant watch against censorship. Events included debates on banned books and a fireworks display celebrating our freedom to read. We also partnered with the American Booksellers Foundation for Free Expression to launch and host the Web site www.bannedbooksweek.org, which featured a list of dozens of Banned Books Week events at local public libraries and bookstores across the country.

Banned Books Week 2009 begins on September 27 and continues through October 4, 2009. All BBW merchandise,

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FTRF report to ALA Council

The following is the text of the Freedom to Read Foundation's report to the ALA Council, delivered by FTRF President Judith Platt at the ALA Midwinter Meeting in Denver on January 26.

As President of the Freedom to Read Foundation, it is my privilege to report on the Foundation's activities since the 2008 Annual Conference:

LITIGATION VICTORIES

There have been three significant legal victories for FTRF since our last report. The first marked the successful (and long overdue) end to our fight to overturn the Child Online Protection Act (COPA), a fight that has taken ten years and spanned three presidential administrations. Enacted by Congress after the Supreme Court struck down the Communications Decency Act, COPA would have criminalized the transmission of materials "for commercial purposes" considered to be "harmful to minors" via the World Wide Web if those materials could be accessed by minors. In the spring of 2007 COPA was struck down for a second time by the same federal judge who issued a preliminary injunction barring its enforcement in 1999. The Supreme Court upheld that injunction in 2004 but sent the case back for a new trial that would take into account technological changes which had occurred in the intervening years since the law's enactment.

FTRF filed *amicus* briefs at each stage of the litigation, arguing that COPA placed an unconstitutional burden on protected speech between adults and that filtering technology administered by parents is a more effective, less intrusive way of protecting minors than criminalizing First Amendment-protected speech on the Internet.

In July 2008, the U.S. Court of Appeals for the Third Circuit struck down COPA (for a second time), ruling that the law would deprive adults of constitutionally protected speech to which they are entitled and further that it was not narrowly tailored to achieve the government's goal of protecting children. The appellate court held that the voluntary use of filtering software by parents is a less restrictive and more effective alternative to criminalizing Internet speech, allowing the filters to be tailored to accommodate the varying ages of the children and the family's personal values.

In very welcome news, on January 21 the U.S. Supreme Court, without comment or dissent from any of the nine Justices, denied the government's petition for review, leaving the Third Circuit ruling in place and ending the litigation.

The second legal victory was an important decision that places some limits on the government's ability to impose a gag order when it uses National Security Letters (NSLs) to obtain information. Last month, the Second Circuit Court of Appeals handed down a decision in *John Doe and ACLU* v.

Mukasey (formerly *ACLU* v. *Gonzales*), a lawsuit in which FTRF has filed *amicus* briefs. The court held that the NSL statute was unconstitutional to the extent that it imposes a gag order on NSL recipients without placing the burden of obtaining judicial review of the gag order requirement on the government. It also found the statute unconstitutional to the extent that the government's claim that a gag order is required by national security must be treated as conclusive by a reviewing court. It held that the government must show there is a reasonable likelihood of harm or criminal interference and that the burden of proof is on the government rather than on the individual challenging the gag order. The court recommended that the government put in place a notice procedure that would inform NSL recipients of their right to ask for judicial review. The Second Circuit has remanded the case to the district court, with instructions that the government develop procedures in line with its ruling under the guidance of the district court.

Finally, we are pleased to report the successful conclusion of *Big Hat Books* v. *Prosecutors*, the legal challenge to an Indiana statute that would have required booksellers and others selling books or other materials that are "harmful to minors" as defined by Indiana law to register with the state as an "adult" business, provide a description of the materials for sale and pay a $250 registration fee. A federal district court in Indianapolis held the statute unconstitutional, ruling that while the government has a compelling interest in protecting minors, the registration law was too vague and not narrowly tailored to achieve that goal. The court held that the law would restrict adults' ability to access protected expression and that there are existing Indiana criminal statutes that criminalize the dissemination to minors of materials deemed harmful to them. FTRF was a plaintiff in the lawsuit.

NEW LITIGATION

In line with its mission to protect the right of individuals to express ideas without government interference, FTRF continues to defend the right of authors to publish and speak freely. This past year, FTRF joined in a lawsuit, *Wilson* v. *McConnell*, challenging the CIA's decision to prohibit former CIA operative Valerie Plame Wilson from mentioning in her memoir the pre-2000 dates of her service with the agency, notwithstanding the fact that those dates had been included in an unclassified letter to Ms. Wilson which was introduced at House hearings and read into the Congressional Record and which is widely available on the Internet. A federal district court ruled that the CIA's redactions did not violate Ms. Wilson's First Amendment rights, and the case is now before the Second Circuit Court of Appeals and was argued on January 8.

FTRF has filed an *amicus curiae* brief along with several partners, including the Association of American Publishers, the American Booksellers Foundation for Free Expression, the American Society of Newspaper Editors, the Reporters Committee for Freedom of the Press, and the Society of Professional Journalists. The brief argues that the rationale for imposing a prior restraint on Wilson was undermined when the information became public and that the district court should have required the CIA to demonstrate that its interest in censoring public-domain information outweighed Wilson's and Simon & Schuster's First Amendment rights.

ONGOING LITIGATION

The Foundation continues to monitor and to participate in other lawsuits aimed at protecting basic First Amendment free speech rights.

One of these lawsuits, *Powell's Books, Inc*. v. *Hardy Myers*, challenges Oregon's new "harmful to minors" law that criminalizes the dissemination of sexually explicit material to anyone under the age of 13 or the dissemination to anyone under the age of 18 of any material with the intent to sexually arouse the recipient or the provider. The new statute makes no provision for judging the material as a whole or for considering its serious literary, artistic, or scientific value. In December the district court ruled that the law was facially constitutional and refused to enjoin its enforcement. The court acknowledged that the law's definition of "harmful to minors" materials does not match the constitutional standard set out by the Supreme Court in *Miller* v. *California* and *Ginsberg* v. *New York*, but held that any review of the law only required that the court determine if prosecutors, judges, and juries would use the law to criminalize materials that would otherwise be legal under the obscenity tests set forth in *Miller* and *Ginsberg*. The court said it was unlikely that any of the plaintiffs would be prosecuted if they disseminated any of the books provided as examples of works that might be restricted (including *Kama Sutra*, *The Joy of Sex*, *How Sex Works*, *It's Perfectly Normal*, *Where Did I Come From*?, *Mommy Laid an Egg*, several graphic novels, and pamphlets from the Cascade AIDS Project and Planned Parenthood).

Because the court's decision conflicts with established legal authorities addressing "harmful to minors" laws and will likely chill protected expression, FTRF anticipates that the ruling will be appealed to the Ninth Circuit.

FTRF continues to closely monitor two other lawsuits important to the library community. One is *American Civil Liberties Union of Florida* v. *Miami-Dade School Board*, the lawsuit challenging the Miami-Dade School Board's decision to remove from its classrooms and libraries all copies of the book *Vamos a Cuba* and its English-language companion book, *A Visit to Cuba*, asserting that this picture book aimed at four- to six-year-olds fails to accurately convey the harsh political realities of life in Cuba. FTRF has filed an *amicus* brief in the case, which is still pending

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one library's experience with censorship

In August 2005, a patron perused the health section at the Topeka and Shawnee County Public Library looking for healing books when the patron was startled by one title. There on the shelf was *The Joy of Gay Sex*. Upset, the person wrote to the library.

The Topeka and Shawnee County Public Library has received 13 requests to restrict or remove materials from its collection since 2000. "I am not against sex, but sex between two men I am against. It is not natural," the person wrote. The concerned citizen continued at the end of the complaint, "Please remove it from the library."

That was one of 13 such requests to restrict or ban access to materials at the library since 2000. The most recent complaint came late last year when Kim Borchers asked the library to restrict four books about sex: *Sex for Busy People*, *The Lesbian Kama Sutra*, *The Joy of Sex,* and *The Joy of Gay Sex*.

Many of the 13 concerns, such as those of Borchers, involved sexual content in books or movies, while others voiced displeasure about excessive scariness in a kid's film or depictions of children disrespecting their parents in a written work.

To date, the library has rejected all of those requests. It does keep five materials behind the desk: *Playboy* magazine, due to its content being prohibited for minors, and certain issues of the magazines *Brides*, *Consumer Reports*, *Value Line,* and *Sports Illustrated* because they are often stolen.

The library's responses often cite its 14 selection criteria. Sometimes, the letters sound more like lessons on the purpose of art in society. Whatever the concern over a material, the library's main response is the same: intellectual freedom.

"We try to have the same kind of range in our collection that you'll find in our community," said Thad Hartman, the library's collections development supervisor.

Shawnee County residents haven't followed the norm in their request to ban books. None of the concerns was over the American Library Association's top 10 most challenged books of the 21st century. No one asked to remove any of the Harry Potter series or *Of Mice and Men* by John Steinbeck. But the core of their concerns was the same: sex.

In May, a patron asked the library to remove "Brokeback Mountain," the acclaimed movie about two male cowboys' secret affair. "Inappropriate material for a public library," the person wrote. In May 2005, another library customer objected to "Election," about a high school teacher's downward life spiral, including his affair with a student. "This film is troublesome morally, ethically," the person wrote.

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report calls online threats to children overblown

A task force created by 49 state attorneys general to look into the problem of sexual solicitation of children online has concluded that there really is not a significant problem. The findings ran counter to popular perceptions of online dangers as reinforced by depictions in the news media like NBC's "To Catch a Predator" series. One attorney general was quick to criticize the group's report.

The panel, the Internet Safety Technical Task Force, was charged with examining the extent of the threats children face on social networks like MySpace and Facebook, amid widespread fears that adults were using these popular Web sites to deceive and prey on children. But the report concluded that the problem of bullying among children, both online and offline, poses a far more serious challenge than the sexual solicitation of minors by adults.

"This shows that social networks are not these horribly bad neighborhoods on the Internet," said John Cardillo, chief executive of Sentinel Tech Holding, which maintains a sex offender database and was part of the task force. "Social networks are very much like real-world communities that are comprised mostly of good people who are there for the right reasons."

The 278-page report, released January 14, was the result of a year of meetings between dozens of academics, experts in childhood safety and executives of thirty companies, including Yahoo, AOL, MySpace, and Facebook.

The task force, led by the Berkman Center for Internet and Society at Harvard University, looked at scientific data on online sexual predators and found that children and teenagers were unlikely to be propositioned by adults online. In the cases that do exist, the report said, teenagers are typically willing participants and are already at risk because of poor home environments, substance abuse or other problems.

Not everyone was happy with the conclusions. Richard Blumenthal, the Connecticut attorney general, who has forcefully pursued the issue and helped to create the task force, said he disagreed with the report. Blumenthal said it "downplayed the predator threat," relied on outdated research and failed to provide a specific plan for improving the safety of social networking.

"Children are solicited every day online," Blumenthal said. "Some fall prey, and the results are tragic. That harsh reality defies the statistical academic research underlying the report."

In what social networks may view as something of an exoneration after years of pressure from law enforcement, the report said sites like MySpace and Facebook "do not appear to have increased the overall risk of solicitation."

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panel urges Obama to ease limits on scientific exports and visas

A National Academies study panel called on President Barack Obama to ease federal limits on high-technology exports and visas for scientists and researchers as soon as he takes office as president, warning that the risks to the nation's economy and security preclude waiting any longer for Congressional action.

The Academies, which had some success in winning fund increases for college students and research institutions after bringing out its 2005 "Gathering Storm" report on the role of science in global economic competitiveness, has now put forward "Fortress America," by a 20-member committee of scientists and industry leaders, which highlights the negative effects of export controls and visa restrictions.

The new report says that Obama should immediately enact, by executive order, changes that include a wholesale loosening of the criteria for allowing exports of sensitive technology. The president also should establish a policy of automatic one-year visa extensions for any foreign student in a scientific field who wants to seek employment or pursue further studies in the United States, it says.

Such changes are necessary because the United States still adheres to cold-war-era protections on its scientific research, report authors say. "The system of export controls and visa applications of the United States is broken," said one of the committee's co-chairmen, Brent Scowcroft, national security adviser to Presidents Gerald Ford and George H. W. Bush. "They were crafted initially for a world which has disappeared."

Action by the president is essential because, the report says, Congress for years has proved itself "unwilling or unable to deal with" the visa and export-control limits stifling U.S. technological innovation.

U.S. regulations damage both the nation's economic competitiveness and its national security by shutting the United States off from outside discoveries, Scowcroft told a Washington briefing. "We are still a leader, but we are only one among many," he said. The committee's proposal "recognizes the world as it is and as it's going to continue to change."

The committee issued the 100-page report after two years of study. It highlighted the case of Goverdhan Mehta, a past vice chancellor of the University of Hyderabad, in India, and past president of the International Council for Science, who canceled plans to deliver a lecture at the University of Florida in 2006 after facing extensive questioning by officials at the U.S. Consulate in Chennai, India. Mehta said he was embarrassed by the ordeal he endured, including questions from embassy officials he regarded as challenging his integrity, and withdrew his visa application.

The proposal suggests nothing that would change either the current federal system concerning technologies that are classified, meaning they cannot be disclosed even to U.S. citizens, or current limits that bar exports to certain unfriendly nations,

The report attracted words of support from higher-education and science groups, as well as cautions about the political and, possibly, legal limits on Obama's acting in the manner it suggests.

The proposal to bypass Capitol Hill through a series of presidential orders shows that "Congress hasn't been able to do anything" on these issues, said Tobin L. Smith, senior federal-relations officer at the Association of American Universities. Yet "the one thing I question is the feasibility of doing these things without Congress actually raising a fit," he said.

The possibility of Congressional criticism might not deter Obama, said Steven Aftergood, a specialist in security policy at the Federation of American Scientists. "Today

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Ayers cancels speech at U. of Toronto after being denied entry into Canada

American voters largely shrugged off attempts during last year's presidential campaign to portray Bill Ayers, the former antiwar militant who teaches at the University of Illinois at Chicago, as a terrorist. Canadian border officials apparently still have some issues with the education professor.

The Canada Border Services Agency declared him inadmissible at the Toronto City Centre Airport January 18 forcing him to cancel a planned speech at an education conference.

Ayers had been scheduled to speak to a research group at the University of Toronto, the Centre for Urban Schooling and the Secondary Program: Inner City Education. In a statement on its Web site, the center said that organizers were "shocked" and "extremely disappointed" by the border agency's actions, and that the event would be rescheduled.

Jeffrey Kugler, the center's executive director, called the refusal to allow Ayers into the country a violation of academic freedom. "There is no one who could have thought it possible there was any danger to Canadians to letting him in," Kugler said.

The Canadian Association of University Teachers released an open letter to Prime Minister Stephen Harper that declared it is wrong for the government to decide whom universities may invite to speak on their campuses. Reported in: *Chronicle of Higher Education* online, January 19. □

Krug earns Brennan Award

The Thomas Jefferson Center for the Protection of Free Expression announced January 13 that Judith F. Krug, director of the American Library Association's Office for Intellectual Freedom (OIF), will receive the William J. Brennan Jr. Award.

Krug is only the fifth recipient of the award since it was first given in 1993. She will receive formal recognition in Chicago on July 12 at the Freedom to Read Foundation's 40th Anniversary Gala, which will be held in the new Modern Wing of the Art Institute of Chicago.

Located in Charlottesville, Virginia, the Thomas Jefferson Center is a nonprofit, nonpartisan institution dedicated to protecting free expression in all its forms. The Center pursues that mission through education, research and intervention on behalf of the First Amendment freedoms of free speech and free press.

The William J. Brennan Jr. Award recognizes a person or group for demonstrating a commitment to the principles of free expression followed by the late U.S. Supreme Court Justice. This year, the center honors Krug's remarkable commitment to the marriage of open books and open minds.

Krug, director of OIF since 1967, as well as the director of the office's Freedom to Read Foundation since 1969, has fought would-be censors over everything from Huckleberry Finn to the Internet. She has tirelessly worked to protect and promote the library as a First Amendment institution. Often in the face of great personal criticism, Krug has never wavered in her defense of First Amendment freedoms, whether testifying before Congress, leading legal challenges to unconstitutional laws or intervening hundreds of times to support and advise librarians in their efforts to keep particular books available to the public.

Krug earned her B.A. from the University of Pittsburgh and her M.A. from the Graduate Library School of the University of Chicago. In 2005, Krug received an honorary Doctor of Humane Letters from the University of Illinois at Urbana–Champaign. Early in her career, Krug held positions in various Chicago libraries, including reference librarian at the John Crerar Library and head cataloger at the Northwestern University Dental School Library. Before assuming her present duties in the Office for Intellectual Freedom, she was the research analyst for the American Library Association.

Past recipients of the Brennan Award are Georgetown Law professor and First Amendment advocate David Cole in 2004; President of New York's Nassau Community College and ardent defender of academic freedom Sean Fanelli in 2001; owner of Denver's Tattered Cover independent bookstore and founder of Colorado Citizens Against Censorship Joyce Meskis in 1996; and Texas attorney Anthony Griffin, who received the first Brennan Award in 1993 for his extraordinary defense of First Amendment freedoms on behalf of the Texas ACLU. ☐

2008 Downs Award given to Brewster Kahle and the Internet Archive

In May 2008, the FBI withdrew the national security letter it issued to the Internet Archive, one of the largest digital archives in the world. Among the estimated hundreds of thousands of national security letters that have been issued, it was only the third time the FBI had withdrawn its request.

For his successful challenge to the national security letter, Brewster Kahle, a digital librarian, director, and co-founder of the Internet Archive, has been awarded the 2008 Robert B. Downs Intellectual Freedom Award by the faculty of the Graduate School of Library and Information Science at the University of Illinois at Urbana–Champaign.

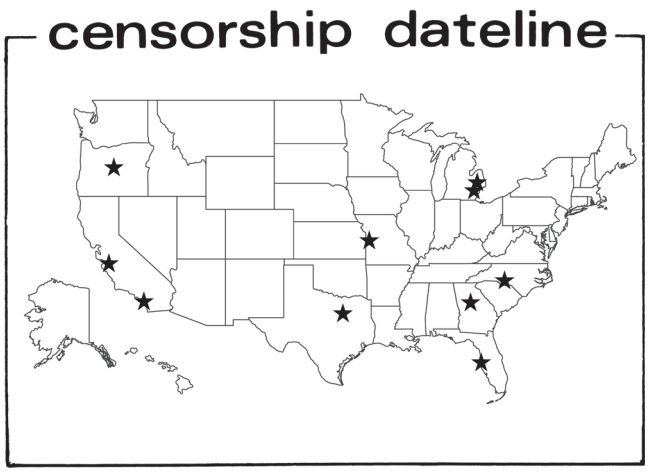
The Internet Archive, according to its Web site, is a "digital library of Internet sites and other cultural artifacts in digital form" with over 500,000 card-carrying patrons. In November 2007, Kahle and the Internet Archive were issued a national security letter seeking information about a specific patron.

In response, Kahle, along with the Electronic Frontier Foundation and the American Civil Liberties Union, filed a lawsuit against the federal government claiming the national security letter was unconstitutional. After four months of negotiation, the FBI withdrew its request and lifted Kahle's gag order. Shortly thereafter, Kahle held a news conference and was quoted as saying "The goal here was to help other recipients of NSLs to understand that you can push back on these."

GSLIS Assistant Professor Jerome McDonough said, "A librarian has to be an advocate for the user, and that is a job that requires intelligence, sensitivity, passion, and courage. Brewster embodies all of these traits."

A reception to honor Kahle was held during the Midwinter Meeting of the American Library Association in Denver. The Greenwood Publishing Group provides the honorarium to the recipient of the Downs Intellectual Freedom Award and also co-sponsors the reception.

The Robert B. Downs Intellectual Freedom Award is given annually to acknowledge individuals or groups who have furthered the cause of intellectual freedom, particularly as it affects libraries and information centers and the dissemination of ideas. Granted to those who have resisted censorship or efforts to abridge the freedom of individuals to read or view materials of their choice, the award may be in recognition of a particular action or long-term interest in, and dedication to, the cause of intellectual freedom. The award was established in 1969 by the GSLIS faculty to honor Robert Downs, a champion of intellectual freedom, on his twenty-fifth anniversary as director of the school. ☐



libraries

Rocky Creek, Florida

A Rocky Creek man wants to have a film he regards as pornographic removed from the shelves of the Town 'N Country Regional Public Library. Frank DeAngelis, a former police officer and retired sociology professor, said he didn't know what to expect when he checked out *The Films of James Broughton*. DeAngelis said he was shocked to see naked men engaging in various sexual acts. In one of the collection's films, "Devotions," two men dress up like nuns and embrace and kiss.

But what really concerned DeAngelis is that naked children are shown, albeit in nonsexual situations. "Why would they put little children in there to infer pornography?" DeAngelis said. "They crossed the line with the little children."

Linda Gillon, manager of programming for Hillsborough County's Department of Library Services, said she was not familiar with the film. She talked to DeAngelis and suggested he file a complaint. Gillon said librarians research reviews, look at lists of award winners and check other libraries' collections to ensure films and books meet "community standards." The committee that chooses DVDs does not look at every video.

"It's just like we can't read every book we have in the library," Gillon said.

Broughton was a poet, playwright and avant-garde filmmaker. Born in 1913 in Modesto, Calif., Broughton wrote more than twenty books of verse and considered himself "first and foremost a poet." But his films, including "Dreamwood," "The Pleasure Garden" and "The Golden Positions" received more attention, earning him an American Film Institute lifetime achievement award in 1989. He died in 1999 at age 85.

The DVD that DeAngelis borrowed was not rated but had a warning on the back cover saying it was for "mature audiences." The front cover shows a man sitting on the floor, filming a dancing man who appears to be naked.

Keith Allen, supervisor at the Town 'N Country library, said he had never heard of the film and doesn't remember anyone complaining about it. "When people have complaints there is formal procedure," Allen said. "We take them very seriously and do look at it."

County library policies lay out a three-step level of review when a patron complains about material. The first step calls for two librarians to review the content and make a recommendation to the library system materials manager, who makes a decision. If the patron disagrees with that decision, a review by the director of libraries can be requested. A third level of review by the library board is available if the customer is not satisfied with the library director's decision.

"Sometimes things slip through," Gillon said. "That's why we have customers fill out this complaint so we can address it correctly."

DeAngelis said he was considering making a formal complaint to the sheriff's office and county commissioners. His main goal is to have the film removed from all county libraries. "I think parents should be aware this happened, and it could happen again," he said. "This is way beyond the pale." Reported in: *Tampa Tribune*, December 23.

Snellville, Georgia

Laura Booth said she was shocked when she read a book her daughter had checked out of South Gwinnett High School's library last year. Booth said she read Elizabeth Cox's novel, *Night Talk*, after her daughter, then a junior at the Snellville school, asked her to look at the book and decide if it was appropriate material for teenagers. After reading the book, Booth decided it wasn't. She said the story, which portrays the friendship of a white girl and a black girl during the Civil Rights era, contains graphic sex scenes that read like a how-to guide.

"The sex is just so detailed it reads like pornography, in my opinion," Booth said.

In November, Booth took her complaint before a school committee comprised of three teachers and four parents, but the group denied her request to restrict the book's use or have it removed from the media center.

"They read the book and determined that the instructional value outweighed the concerns," said Jorge Quintana, spokesman for Gwinnett County Public Schools.

The Snellville resident appealed the decision, and she was set to plead her case in February to a district committee of six parents, a teacher, a media specialist, a school principal, and an area superintendent.

"I hope they decide one of two things: either put a block on the book [requiring parental permission to check the novel out of the media center] or remove the book from the library," Booth said. "I'm not trying to go against Gwinnett County [schools]. I just think the material in the [school] library needs to be scrutinized."

Quintana said the committee can decide one of three things: keep the book, remove the book, or restrict the book. If Booth disagrees with the county committee's decision, she will have ten days to appeal to the school board, Quintana said. Reported in: *Gwinnett Daily Post*, January 6.

Blue Springs, Missouri

A reverend at a Blue Springs parish and school removed two books about President-elect Barack Obama from the Catholic school's library. The Rev. Ron Elliott at St. John LaLande School said someone complained about the content of the books and he wanted to review them. The reverend said he was concerned about Obama's position on abortion.

"I am very pro-life," Elliott told a local television news reporter. "Because of his stance on certain issues, I was asked to look into that matter." Elliott said the books he pulled were printed shortly before Obama was elected president.

Elliott said he has read the books and didn't find anything wrong with them. He said he would put the books back on the shelf in February or March, "after the dust kind of settles."

St. John LaLande School has an early childhood center and also teaches students from kindergarten through eighth grade. Reported in: kmbc.com, December 12.

Charlotte, North Carolina

One word in *To Kill a Mockingbird*, the Pulitzer Prize-winning novel by Harper Lee, ignited debate recently when Charlotte celebrities were recruited to read chapters for the Charlotte-Mecklenburg library's Big Read podcast. Three who were assigned chapters containing the word "nigger" decided they didn't want to be recorded reading the incendiary word.

It's hardly the first time readers have balked at language in the novel. The American Library Association includes *To Kill a Mockingbird* on its list of books most frequently challenged and banned. Some challenges have come specifically because of the N-word.

"When I got in the (sound) booth, I just had a hard time," says WCNC (Channel 36) news anchor Sonja Gantt, who is African American. "For me, the word could have nothing but a negative connotation. I really felt sick. I just couldn't do it."

Former WSOC (Channel 9) anchor Kim Brattain and Carolina Panthers announcer Mick Mixon, both white, also wouldn't read the word. Both say they grew up in homes where it was taboo. Mixon also worried someone could use his reading of the word out of context. "I can't think of a more volatile and objectionable word," he says.

In the 2007 book, *The N Word: Who Can Say It, Who Shouldn't, and Why*, Jabari Asim traces its history in America to 1619, when Jamestown colonist John Rolfe wrote in his diary of "twenty negars," African captives arriving on a Dutch ship. The word's roots are usually traced to the Latin word niger, meaning "black."

Asim, who is African American, attributes its power to the original slave–master relationship between blacks and whites in America, unique among American ethnic and racial groups. "I argue that before the Civil War, the N-word became a convenient shorthand to justify that African Americans were unfit for freedom, and after it, that they were unfit for citizenship."

Today, the residue of its past clings to the word, Asim says, conveying that a person so called is inferior. That residue was on Gantt's mind as she struggled to read a chapter in which Bob Ewell, a white man, testifies that Tom Robinson, a black man, raped his daughter, Mayella.

Ewell, the book's most odious character, refers to Robinson as a "nigger." The book is set in Depression-era Alabama, and Gantt says she understood Lee's decision to use the word. "I know people spoke that way—and that's how someone of his thinking would have spoken," she says. But she couldn't bring herself to say it. Reading the chapter for the podcast, she skipped over it a couple of times and said "those black people" on one reference.

Gantt doesn't remember anyone ever calling her the N-word. "That doesn't mean I wasn't," she says. But her father, former Charlotte Mayor Harvey Gantt, surely was when he integrated Clemson University in 1963.

Gantt, Brattain, and Mixon debated how they should handle the offending word. Brattain, who had originally substituted a euphemism when she recorded her chapter, sought advice from her sister, an American history professor. Her sister counseled that the book should be read as written.

That's also what Charlotte-Mecklenburg library officials concluded. They then re-recorded several chapters, assigning chapters without the N-word to Gantt, Brattain and Mixon. They also included disclaimers on the library's Web site noting that the podcast contains language that some may find offensive and that it is solely the author's language.

Many readers, including UNC Charlotte School of Education Dean Mary Lynne Calhoun, who read a podcast chapter containing the word, argue that it serves an important purpose. "My take on it was this is a story about a com-

munity that's willing to railroad an innocent guy to preserve the racial divide," says Calhoun, who is white. "That word is a symbol of the willingness to hurt."

Charlotte-Mecklenburg school board member Trent Merchant, who is white, was adamant that the book be read as written. "I said if the language was altered, they can't use my voice." People who challenge offensive language in classics "are the types of people who tend to miss the point and the big picture," the former English teacher argued. "The people who would seek to ban *To Kill a Mockingbird* or *Slaughterhouse Five* or *Huckleberry Finn* are the people who need to read the book more than anyone."

Asim discusses *Huckleberry Finn*, which uses the word more than 200 times. He concludes literary merits justify the usage. He says he'd say the same thing about *To Kill a Mockingbird*. While artists can use the word effectively, he dislikes gratuitous use by African Americans, arguing it helps keep blacks at the bottom of America's socio-economic ladder.

Will the N-word ever lose its power? Asim is unsure. Perhaps, he says, the election of America's first African American president will prompt blacks who use the word to curtail their use, just as whites stopped using it publicly after the civil rights movement.

He points to a recent article about rapper Jim Jones, who said President Obama's election inspired him to drop "nigga" from his vocabulary and replace it with "Obama." The rapper even offered examples, such as, "What up, my Obama?" Reported in: *Charlotte Observer*, January 30.

schools

Newman, California

With little discussion, school district trustees voted 4–1 February 2 to uphold the removal of *Bless Me, Ultima*, by Rudolfo Anaya, from Orestimba High School's English classes. The decision ended a monthslong dispute about banning the Latino coming-of-age novel taught to sophomores.

Trustees heard another round of public comment from parents, teachers and community members urging them to look past the book's obscenities and recognize its literary merits, including its symbolism, imagery and, most of all, its ability to connect with teenagers.

Trustee Laura Elkinton dissented, saying that she would have liked to see the book reinstated, but not for sophomores. She favored waiting until students' senior year to teach the novel.

At an earlier meeting when English teachers submitted a compromise, they said California's curriculum called for British literature during 12th-grade English and *Bless Me, Ultima* wasn't a British novel. Teachers offered to stop requiring the book as summer reading for sophomore honors students.

In California, the Department of Education recommends the novel for grades nine through 12, but cautions: "This book was published for an adult readership and thus contains mature content. Before handing the text to a child, educators and parents should read the book and know the child."

In Newman, about 25 miles south of Modesto, *Bless Me, Ultima* has been part of the sophomore curriculum at the district's only traditional high school for more than a decade, said Catherine Quittmeyer, chairwoman of Orestimba High School's English department. Four or five years ago, teachers decided to move it to the summer reading list for honors students and to keep it part of the classroom curriculum for other sophomores.

Teachers said the book helped them connect with their Latino students, who make up two-thirds of the district.

"Those kids came alive" when they read the book, Quittmeyer said. "It wasn't a book by a dead white male. They understood the words, they understood the culture, they would be the ones we would turn to as experts. They felt so empowered by this book."

Senior Brittney Clark, 17, said the book has value for all teenagers. "You can relate to the kid because he's trying to figure out what he should do with his life without upsetting his parents," said Brittney, the daughter of a teacher.

The controversy began last summer when Nancy Corgiat, the mother of a sophomore, complained about the book to the superintendent.

"She initially complained about the vulgar language, the sexually explicit scenes, and an anti-Catholic bias," Superintendent Rick Fauss said. Corgiat reportedly told board members in January that the book's themes "undermine the conservative family values in our homes."

Fauss ordered the book removed in October, sparking criticism because he had not finished reading it before making the decision. (He completed the book before a series of board meetings in January at which the book was discussed.) Fauss said he followed district policy, had two committees review the book, and ultimately opted to remove it from the classroom.

"It went through all the procedures as outlined in board policy and ended up with me," he said.

"We're disappointed, but it's not unexpected," said Quittmeyer after the decision. "We're pretty sure the board had made up their minds a few meetings ago."

"Where do we go from here? We go to school tomorrow and we teach our classes," said Matthew Clark, teachers association president.

Orestimba High enrolls about 750 students from rural Newman and Crows Landing in Stanislaus County. English teachers must find a replacement for the book for classes this spring. The book still will be available in the library.

During public comment, one parent voiced her concern about the book's ban and the process by which it was pulled from classes. She said she wondered who was leading the

district. Others said the board was spending too much time counting "bad words" in *Bless Me, Ultima*.

Although the parent complaint about *Bless Me, Ultima* centered on what that parent called the anti-Catholic tone of the book and its sexually explicit scenes, Superintendent Fauss and trustees focused on the book's curse words.

"There was excessive vulgarity or profanity used throughout the book," said Fauss, head of the nearly 2,700-student Newman Crows Landing Unified School District. "The context didn't . . . make it acceptable."

Bless Me, Ultima is set in New Mexico and profiles the life of a Latino boy maturing, asking questions concerning evil, justice, and the nature of God, and trying to reconcile herbal magic with traditional Roman Catholicism.

Throughout Newman's controversy, the ban has drawn support and opposition. Across the United States, *Bless Me, Ultima* is lauded as one of the top books for young people and was chosen as the literature selection for the state-wide Academic Decathlon competitions this year and was spotlighted on former first lady Laura Bush's "must-read" list.

"What are these people afraid of?" asked author Anaya, 71. "We have ample evidence throughout history of what happens when we start banning books, when we are afraid of ideas and discussion and analytical thinking. The society will suffer."

The board voted to uphold Fauss's decision, but also, according to three members, to cease discussing the matter with the media. "We're done with this," said trustee Barbara Alexander, who is a town librarian and supported the ban.

But the controversy may not be settled. An attorney with the American Civil Liberties Union said the group had not ruled out a lawsuit because it is concerned that the board's decision was not made on constitutional grounds. Although school districts have broad discretion to set curriculum, courts have ruled that removing books because one disagrees with them or to further a religion is not permissible.

The parent's initial complaint involved religion, although Fauss insists that the book was banned solely because of profanity.

"It really comes down to the true motives of the board," said Andre Segura, an ACLU attorney in San Francisco. "If a school board bans the book because of some perceived conflict with the community's religious views or political or philosophical orthodoxy, that's impermissible."

Fauss said he was confident that the district would prevail. "We're not afraid of that; we know what our rights are," he said. "We have insurance; we'll fight it."

Richard Ackerman, head of the Pro-Family Law Center in Temecula, said the district had the right to decide what's best for its students, particularly in the "family values area." He added that because the book remains in the library, the district is on solid ground.

"It's not censorship," he said. "It's simply a matter of determining curriculum, which is left to the school district."

There has been a run on the book at the school library, with a waiting list of students eager to check out the novel, and teachers bought extra copies in both English and Spanish.

Meanwhile, some teachers are worried about district plans to review all literature taught in the classroom. "Our biggest fear is what's next? If they're going to go after this book, what else?" asked Quittmeyer. "Is *Caged Bird* next, or *Huck Finn*?" Reported in: *Modesto Bee*, February 3; *Los Angeles Times*, February 4.

Clawson, Michigan

A book deemed too racy for middle school students is being pulled from classrooms in Clawson. The novel is called *My Sister's Keeper*, by Jodi Picoult, and is the story of a young girl who sues her parents because they want her to donate a kidney to her sister.

The mother of a 13-year-old student at Clawson Middle School objected to the book after her daughter was assigned to read it.

The district put together a committee to review the book, and the majority voted not to use the book at the middle school. The youth services librarian at the public library voted to use the book, but the district superintendent says not only will the book not be read at the middle school, it will not be assigned to high school students, either. Reported in: wxyz.com, December 18.

Wyandotte, Michigan

Some parents in a Detroit-area community have raised concerns over a book they said is too sexually explicit for their students. The book is *The Bookseller of Kabul*, a nonfiction account of what life is like inside an Afghan household. The book is an assigned reading for an eleventh grade honors English class at Roosevelt High School in Wyandotte.

"I came upon these two passages and I was just kind of shocked that they were in there and we were allowed to read," said junior Jamie Sarna.

"The passages in particular were too sexually graphic for kids," said Sarna's father, Anthony. "It shouldn't have been assigned to them."

At a recent school board meeting, the family raised their objection to the book, while others defended the book. "They need to know how the rest of the world lives, and many of our young people don't know and don't care," said former teacher Mary Louise Bahnemann. "This is more disturbing to me than the disturbing passages in the book."

The book has since been removed from the school's library and classrooms.

The school said it's looking to update its current media selection process by creating a reconsideration committee to handle challenges to assigned readings.

"If this book was an 'R' rated movie and I wanted to go see it, I'm 16 years old and I would not be able to get in without a license or without a parent," said Sarna.

The school said the book went through several reviews and was approved for high school students before being placed on the assigned reading list for the class. The teacher of the class in which the book is assigned said students must apply for the honors class and are accepted in early May. He also said every student had access to a blog where he put the list of all the books that were going to be assigned. Reported in: msnbc.com, February 3.

Prineville, Oregon

An award-winning book that was suspended from a Crook County High School classroom in December after a parent complained it was offensive will remain out of the classroom until the school district can revamp its policies.

About sixty people turned out January 12 to the Crook County School Board meeting and about fifteen testified about the book. The board then voted 4–1 to continue the temporary suspension, while making the book available to students in the library.

In December, Hank Moss picked up the book his 14-year-old son, Jozee, was reading for an English assignment. Moss said he was shocked by what he read in *The Absolutely True Diary of a Part-Time Indian*. A few days after photocopying some pages of the book and showing them to school board members, the book was pulled from the classroom and school library.

A *New York Times* best-seller and a National Book Award winner, the book was written by Sherman Alexie and is about a boy growing up on the Spokane Indian Reservation who decides to attend an all-white school. The protagonist in Alexie's book discusses masturbation.

A committee made up of teachers, the public, an administrator and a librarian reviewed the book and voted 4–1 to recommend the school board reinstate the book without restrictions. School board members did not have to follow the committee's recommendation.

Sten Swanston, a counselor at the high school, asked the school board members to retain the book. "I know tonight we're talking about issues with sex and racism and I spend a great deal of time with students who suffer from being sexually abused, from poverty and family dysfunction," Swanston said. "If you sit at the tables in our lunch room, you may be shocked. I'm shocked at times. . . . If we do not have a forum to discuss these controversial issues, students will discuss them among themselves and make false assumptions. . . . By banning this book, the problems won't go away, and we need to wrestle this head on."

But the freshman high school student whose father was at the heart of the controversy said he didn't feel the book was appropriate reading material. "Personally, I think we're having two things taught to us," Jozee Moss said. "We have the principal telling us, 'I don't want you cussing in this way or you'll get a referral.' And yet this book talks about all these things in crude ways."

Audience members said Moss should have followed the district's policy, and instead of going straight to the administration he should have discussed it with the teacher so his son could have opted out of reading the book. But at the same time, others said the teacher should have notified Moss that his son was assigned controversial reading material.

School Board Chairman Jeff Landaker was the lone vote against the motion to suspend and wait for further review. "The reason I voted no is because this issue has already taken one month's time," Landaker said. "And it's at a time when, in my opinion, we have more critical issues facing us. We have a financial situation where we've had to cut ten days off the school year and are facing a million-dollar budget shortfall next year. Now, it's going to take two month's time to address this, and I think we need to move on."

The school board and Interim Superintendent Rich Schultz said he would be going over all the policies and procedures for reading material and updating them. He also said another committee made up of a librarian, an administrator, a board member, some teachers and parents will work on the board's policies, which haven't been changed since 1994. Schultz said he hoped the board could again discuss the matter by March.

"It's up to the parents and educators to help a kid prepare for what is outside of Crook County," said Rick Steber, who was a citizen who urged the board to keep the book as part of the high school's curriculum.

"Remember when our parents were going to ban rock 'n' roll?" Steber said. Reported in: *Bend Bulletin*, January 13.

college

Claremont, California

Having your official college song banned is a little like "having your baby shot in front of you," says Carl Olson, a Pomona College alumnus.

Pomona's president, David W. Oxtoby, struck "Hail, Pomona, Hail!" from the college's commencement last spring based on accusations that it may have been written for a blackface minstrel show produced by students in 1910. The resurfacing of that oft-ignored assertion caused a campuswide brouhaha that fed local journalists for days. When the ban was imposed, Olson was outraged.

"It turned into a kind of multifaceted travesty," he says. "And it's only gotten worse with the handling of the president and his committee."

The College Songs Committee that is. After consulting historical records, the ten-member panel decided that "more likely than not" the song had its roots in the long-ago

blackface show. Such events were common on college campuses at the time. An alumni researcher consulting the same records, however, arrived at the opposite conclusion.

Met with evidence that he called "contradictory and open to interpretation," President Oxtoby compromised, keeping the song as the alma mater and allowing it to be sung at alumni and other events, but banning it at commencements and convocations.

Compromise, of course, leaves nobody happy.

Kim B. Bruce, chairman of the computer-science department and a co-chair of the songs committee, says that keeping a composition with questionable origins as the alma mater—a song meant to unify—could potentially be awkward, particularly with Pomona's increasingly diverse population.

And Olson? He's complaining about "political correctness . . . run amok" and promising that "Hail, Pomona, Hail!" will be heard again at college events.

But Oxtoby had the unanimous backing of Pomona's trustees in making his decision, so a reversal is unlikely. Reported in: *Chronicle of Higher Education* online, January 23.

retail

Dallas, Texas

Lavonna DeMoss says the retail outlet Urban Outfitters is showcasing explicit materials for any teen or child to see.

Urban Outfitters sells clothing, household items and books at two stores in Dallas. It attracts shoppers of all ages, especially teenagers.

DeMoss said her first trip to the store with teenage grandchildren in tow caught her off-guard. While waiting for family members to try on clothes, she started looking at books and found something titled *Position of the Day Playbook*, subtitled *Sex Every Day in Every Way*. The book features drawings of 365 sexual positions with titles like "Texas Hold 'Em" and "The Indecent Proposal."

"Well, I couldn't believe it," she said. "Very irresponsible; I see no excuse for it at all. 'The O'Reilly Factor,' that's one of them that's in there," said an angry and indignant DeMoss. "There's so much of it anyway on the Internet, it's thrown at the kids everywhere," she said. "I'm not an old-fashioned, out-of-step grandmother, but I think something has to be done when we see things like this," DeMoss said.

And she's not the only one to be outraged by some of the products sold at Urban Outfitters. The Philadelphia-based company received 250,000 complaints after selling a set of "Jesus Dress Up" refrigerator magnets in 2004. The company discontinued the product. Also discontinued: A T-shirt with the slogan "Everyone Loves a Jewish Girl" surrounded by dollar signs.

Publications like the *Position of the Day Playbook* have sparked complaints nationwide, but an Urban Outfitters spokesperson had no comment on the controversy. Reported in: wfaa.com, January 10.

foreign

Beijing, China

President Obama's 18-minute inauguration speech January 20 was generally lauded by Americans for its candor and conviction. But the Chinese Communist Party apparently thought the new American president's gilded words were a little too direct.

China Central Television, or CCTV, the main state-run network, broadcast the speech live until the moment President Obama mentioned "communism" in a line about the defeat of ideologies considered anathema to Americans. After the off-screen translator said "communism" in Chinese, the audio faded out even as Obama's lips continued to move.

CCTV then showed an anchor asking an analyst about the economic challenges that President Obama faces. The analyst was clearly caught off guard by the sudden question.

The offending line in the president's speech was this: "Recall that earlier generations faced down fascism and communism not just with missiles and tanks, but with sturdy alliances and enduring convictions."

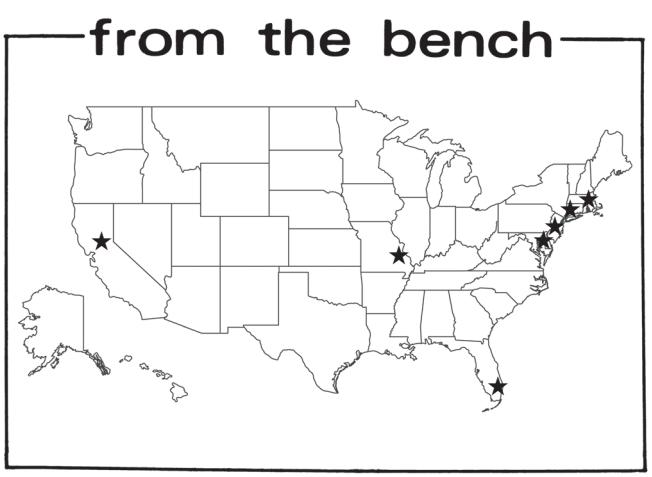
Later, the president went on to say: "To those who cling to power through corruption and deceit and the silencing of dissent, know that you are on the wrong side of history, but that we will extend a hand if you are willing to unclench your fist."

Chinese translations of the speech published the next day by state-run news organizations and on prominent Web portals omitted that line and the word "communism" in the earlier line. The government, however, has allowed the full English text of the speech to be published.

But the censorship might actually have drawn more attention to the speech. Word of the deleted references circulated rapidly online, and Chinese Internet users vented their displeasure. "This rubbish translation is edited at points," groused one post attached to the translation on Sina.com, a popular Web portal. The post characterized the translation with an expletive.

Another user took offense at the speech itself rather than the act of censorship. The user posted a comment vowing to "defeat American imperialism." Some Internet users expressed outrage that President Obama lumped communism with the clearly reviled ideology of fascism. Reported in: *New York Times*, January 22.

(continued on page 66)



U.S. Supreme Court

The government has lost its final attempt to revive a federal law intended to protect children from sexual material and other objectionable content on the Internet. The Supreme Court, on January 21, said it won't consider reviving the Child Online Protection Act, which lower federal courts struck down as unconstitutional. The law has been embroiled in court challenges since it passed in 1998 and never took effect.

The law would have barred Web sites from making harmful content available to minors over the Internet. The U.S. District Court in Philadelphia ruled that would violate the First Amendment, because filtering technologies and other parental control tools are a less restrictive way to protect children from inappropriate content online. That decision was sustained by the U.S. Court of Appeals for the Third Circuit, also in Philadelphia. Reported in: Associated Press, January 21.

libraries

Miami, Florida

A federal appeals court ruled February 5 that the Miami-Dade School Board did not violate the Constitution in 2006 when it removed a controversial children's book about Cuba from the public schools' library system.

In a 2–1 decision, the U.S. Court of Appeals for the Eleventh Circuit in Atlanta said the board did not breach the First Amendment, and ordered a Miami federal judge to lift a preliminary injunction that had allowed *Vamos a Cuba* to be checked out from school libraries.

The majority opinion supported the School Board's authority to set educational standards in Miami-Dade, saying the bilingual book, part of a library series on 24 nations, presented an "inaccurate" view of life in Cuba under its former leader, Fidel Castro.

"The record shows that the board did not simply dislike the ideas in the *Vamos a Cuba* book," appeals court Judge Ed Carnes wrote in the majority opinion. "Instead, everyone, including both sides' experts, agreed that the book contained factual inaccuracies."

But the three-judge panel's opinion—not unlike the School Board's initial vote—was so fraught with political rhetoric such as "book banning" that further appeals seem inevitable. Indeed, Carnes attacked the dissenting opinion's use of the phrase.

"That is a faulty foundation," he wrote in the 177-page ruling. "The board did not ban any book. The board removed from its own school libraries a book that the board had purchased for those libraries with board funds. It did not prohibit anyone else from owning, possessing or reading the book."

Some members of the School Board applauded the ruling.

"This vindicates those board members who said the book was inappropriate because it didn't depict reality," said Vice Chairwoman Marta Pérez. "We faced a lot of criticism."

Board member Ana Rivas Logan, who supported replacing the series with an updated version, said she was happy to see the appeals court give control to the district. "This book was inaccurate, and it was offensive to a whole community," she said.

The ruling, written by Carnes and joined by U.S. District Judge Donald Walter of the Western District of Louisiana, concluded that the School Board also did not violate the due process rights of the American Civil Liberties Union. The legal advocacy group had challenged the panel's decision to remove the book.

"Clearly, this can't be allowed to stand. We must take further action," said Howard Simon, executive director of the ACLU of Florida. "We're going to take further action to prevent the shelves of the Miami-Dade school library from being scrubbed clean of viewpoints some people in the school find objectionable. . . . However much they try to evade the facts and bend the law into a pretzel, censorship is censorship is censorship," Simon said.

In 2006, board members voted 6–3 to remove the book—which had been available in some school libraries as

extracurricular reading for children in kindergarten through the second grade—after Juan Amador Rodriguez, a parent and former political prisoner in Cuba, complained that the book failed to accurately depict life there.

In removing the book, the board overruled the decision of two academic advisory committees and the recommendation of former Superintendent Rudy Crew. Legal costs in the case have exceeded $250,000.

After the ACLU challenged the board's decision, U.S. District Judge Alan Gold ruled that the School Board's opposition to the book was political and that it should add books of different perspectives to its collections instead of removing the offending titles.

One of the appellate judges in his dissenting opinion agreed with Gold. "The banning of children's books from a public school library under circumstances such as these offends the First Amendment," wrote Appellate Judge Charles R. Wilson, who was appointed by former President Bill Clinton.

But Carnes, who was appointed by former President George H. W. Bush, sharply disagreed in the majority opinion, arguing that the School Board removed the book because it sugarcoated a Cuban society oppressed by the Castro government.

"What *Vamos a Cuba* fails to mention and takes great pains to cover up with its 'like you do' misrepresentations, is that the people of Cuba live in a state of subjugation to a totalitarian regime with all that involves," Carnes said.

Crew's replacement as Miami-Dade Schools' chief seemed relieved that the appeals court's majority sided with the School Board. In a prepared statement, Superintendent Alberto Carvalho said he was "glad to see the issue resolved in favor of the School Board. As Superintendent, I intend to lead this school district with a sensitivity for the rich history and culture that make up our community, and to always keep those ideals in mind as I bring recommendations to the School Board," Carvalho wrote.

The parent who started the controversy said he was overjoyed to learn of the decision. "We can't put a book in the schools that lies about what happened in my country," said Juan Amador Rodriguez, father of a 13-year-old girl. "This is an important lesson for everyone. We can't allow the manipulation of the truth in our towns."

Amador Rodriguez said his fight against the book was an example of democracy in action. "In Cuba, you don't have the right to question the education of your child," he said. "Here, I was able to stand up for what I believe in."

The Freedom to Read Foundation filed an *amicus* brief in the case, in cooperation with the American Booksellers Foundation for Free Expression, the Association of Booksellers for Children, Reforma, Peacefire.org, and the National Coalition Against Censorship. Freedom to Read Foundation General Counsel Theresa Chmara summarized the history of the lawsuit and the Eleventh Circuit's 177 page decision:

"The Miami-Dade School Board voted to remove the book *A Visit to Cuba* and the entire "A Visit To" series from the elementary and secondary school libraries in the district. The School Board decided to remove the books despite the fact that two independent bodies consisting of professional educators, administrators and community leaders had reviewed the books and concluded that the series was educationally significant and developmentally appropriate for the audience of four to six year olds to which it was directed. The removal decision was challenged in federal court by the American Civil Liberties Union of Florida, the Miami-Dade County Student Government Association, a parent of an elementary school student and the student.

"School board members defended their removal decision by arguing that the books were factually inaccurate in failing to portray the poverty and government oppression that is present in Cuba. On July 24, 2006 the district court concluded that the removal decision was unconstitutional, holding that the removal decision was couched in terms of "inaccuracies," but was instead a "guise and pretext for 'political orthodoxy.'"

"On February 5, 2009, the Eleventh Circuit reversed that decision with one judge dissenting. The Appellate Court did not reach the issue of whether school censorship complaints should be evaluated under the standards enunciated in the plurality decision in *Board of Education* v. *Pico* (1982), nor whether school library books can be considered part of the "curriculum" pursuant to the standards set forth in *Hazelwood School District* v. *Kuhlmeier* (1988). Instead, the Eleventh Circuit majority conducted a *de novo* review of the factual evidence and concluded that the district court erred in finding that the book was removed for political reasons. The majority concluded that the school board had the discretion to remove the series of books if it determined that the books were educationally unsuitable due to factual inaccuracies in the books. After conducting its own review of the factual evidence, the Appellate Court concluded that the series of books was factually inaccurate and the school board acted within its discretion in removing the books. The majority opinion also rejected the claim that board violated due process by removing an entire series of books when only one complaint was filed about one book in one library. The majority panel concluded that the School Board has the discretion to make removal decisions for the entire district regardless of whether a complaint was filed.

"In his dissenting opinion, Judge Wilson strongly argues that "the record provides palpable support for the district court's conclusion that School Board members banned the book not because of inaccuracies per se but because the book failed to make a negative political statement about contemporary Cuba." The plaintiffs challenging the book removal at issue will now have to decide whether to petition the United States Supreme Court to review the Eleventh Circuit decision."

"We are naturally disappointed with this decision, and we will continue to support the ACLU's efforts to return the books to the shelves of the Miami-Dade school libraries," said Deborah Caldwell-Stone, Deputy Director of the Office for Intellectual Freedom. Reported in: *Miami Herald*, February 6; OIF Blog, February 6.

schools

Burlington, Connecticut

In a key ruling on Internet free speech, a federal judge has found that school officials were within their rights when they disciplined a Burlington high school student over an insulting blog post she wrote off school grounds.

Avery Doninger's case drew national attention and raised questions about how far schools' power to regulate student speech extends in the Internet age.

But in a ruling on several motions for summary judgment January 15 U.S. District Court Judge Mark R. Kravitz rejected Doninger's claims that administrators at Lewis S. Mills High School violated her rights to free speech and equal protection and intentionally inflicted emotional distress when they barred her from serving as class secretary because of an Internet post she wrote at home.

Kravitz's ruling relied in part on the ambiguity over whether schools can regulate students' expression on the Internet. He noted that times have changed significantly since 1979, when a landmark student speech case set boundaries for schools regulating off-campus speech. Now, he wrote, students can send e-mails to hundreds of classmates at a time or post livejournal.com entries that can be read instantly by students, teachers and administrators.

"Off-campus speech can become on-campus speech with the click of a mouse," Kravitz wrote. He cited previous rulings and held that school administrators were entitled to qualified immunity, which shields public officials from lawsuits for damages unless they violate clearly established rights a reasonable official would have known.

Kravitz reasoned that because the nature of student speech rights on the Internet is still evolving, the officials could not reasonably be expected "to predict where the line between on- and off-campus speech will be drawn in this new digital era."

Doninger's attorney, Jon L. Schoenhorn, plans to appeal and said the case may ultimately have to be decided by the U.S. Supreme Court. "We are not backing down," he said.

But Thomas R. Gerarde, attorney for Regional School District 10, likened the case to "taking a no-hitter into the eighth inning." So far, every court ruling has favored the district, with just one piece of Doninger's case left standing by Kravitz's ruling.

"The school district is pleased to have won another decided victory in this seemingly never-ending saga," Gerarde said.

The case stemmed from a 2007 dispute over the high school's jamfest, which Doninger, then the junior class secretary, helped plan. When it appeared that a battle of the bands-type program would not proceed as planned, Doninger wrote in her livejournal blog that "Jamfest is canceled due to the douchebags in central office," and encouraged others to write or call then-Superintendent Paula Schwartz to "piss her off more."

Jamfest wasn't canceled and was later rescheduled. But when administrators found the blog post about two weeks after it was written, Principal Karissa Niehoff told Doninger she could not seek re-election as class secretary. Doninger refused to withdraw her candidacy. Though she was not allowed on the ballot, enough students wrote in her name that she won, but she was barred from serving.

Two courts have ruled on the case previously because Doninger sought an injunction to allow her to serve as class secretary and speak at graduation. Both times, the courts ruled that Doninger had not shown a substantial likelihood of proving that her rights had been violated. Judges in those rulings argued that the district had not violated Doninger's First Amendment rights for several reasons: because the discipline involved participation in a voluntary extracurricular activity, because schools could punish vulgar, off-campus speech if it posed a reasonably foreseeable risk of coming onto school property, and because Doninger's livejournal post was vulgar, misleading, and created the risk of substantial disruption at school.

Kravitz did let stand Doninger's claim that her right to free speech was "chilled" when Niehoff prohibited students from wearing T-shirts that read "Team Avery" to a student council election assembly. That matter can proceed to trial, though Gerarde said he plans to ask Kravitz to reconsider it first.

Doninger graduated in 2008 and is now working for AmeriCorps in an impoverished school In Denver. Reported in: *Hartford Courant*, January 17.

Miami, Florida

A full federal appeals court has declined to reconsider a three-judge panel's ruling that upheld most of a Florida law requiring public school students to recite the Pledge of Allegiance each day.

In July, the panel of the U.S. Court of Appeals for the Eleventh Circuit, in Atlanta, upheld the parts of the law requiring students to have parental permission to opt out of the daily recitations of the pledge. The panel struck down a provision that it interpreted as requiring all students to stand during the pledge, including those who were opting out with parental consent.

On January 26, the full Eleventh Circuit announced it would not reconsider the panel decision. Judge Rosemary Barkett issued a dissent from the denial, saying "the panel's holding that the State of Florida can compel students to

recite the Pledge of Allegiance in violation of their personal beliefs directly contravenes precedent that has been firmly entrenched for over 65 years, since *West Virginia State Board of Education* v. *Barnette* held that the State does not have the power to compel minor students to recite the Pledge to the flag." Reported in: school law blog, January 30.

Farmington, Missouri

A Missouri school district did not violate the First Amendment when it prohibited students from displaying Confederate flags, a federal appeals court has ruled. A three-judge panel of the U.S. Court of Appeals for the Eighth Circuit, in St. Louis, ruled unanimously in favor of the Farmington school district on January 30.

"The record in this case contains evidence of likely racially motivated violence, racial tension, and other altercations directly related to adverse race relations in the community and the school," the court said in *B.W.A.* v. *Farmington R-7 School District*. "Because the school could reasonably forecast a substantial disruption, the administration did not violate the First Amendment by banning the flag."

The district barred Confederate symbols after incidents that included white students surrounding a black student in a confrontation at Farmington High School, and a skirmish at a basketball game in which two Farmington High players allegedly used racial slurs against black players on the opposing team.

The policy was challenged by students who were disciplined for wearing hats and shirts with Confederate flags or other symbols. Amid controversy over the policy, one student was disciplined for wearing a T-shirt that said, "The South was right, Our school is wrong."

The Eighth Circuit court's ruling is consistent with other federal appeals courts to have addressed the issue. The courts have generally ruled that where there have been racial disruptions in school, Confederate symbols may be prohibited. Last year, a panel of the U.S. Court of Appeals for the Sixth Circuit, in Cincinnati, issued such a ruling, which the full Sixth Circuit declined to rehear over the dissent of one member. Reported in: School Law Blog, February 2.

PATRIOT Act

New York, New York

A federal appeals court ruled unanimously December 15 that it is unconstitutional to gag recipients of a National Security Letter from discussing its receipt unless disclosure might interfere with "an authorized investigation to protect against international terrorism or clandestine intelligence activities." The decision in *Does* v. *Mukasey* by the U.S. Court of Appeals for the Second Circuit upheld a September 2007 district court ruling, although the appeals court narrowed the circumstances under which the FBI can enjoin a provider of internet access, interpreted as including libraries, from revealing the receipt of a National Security Letter demanding the e-mail addresses and websites accessed by one or more users.

Appeals court Judge Jon O. Newman agreed with the lower court that a nondisclosure order restrains the recipient "from publicly expressing a category of information, albeit a narrow one, and that information is relevant to intended criticism of a governmental activity" and found it irrelevant that an NSL recipient "did not intend to speak and was not subject to any administrative restraint on speaking prior to the government's issuance of an NSL."

Judge Newman differed, however, on how much judicial oversight the issuance of NSLs should have. However, the appeals court overturned a district court ruling that the FBI get court approval for every NSL before it is issued. Agreeing with the Justice Department that most recipients would not challenge an NSL, Judge Newman suggested that one means of keeping the NSL provision of the PATRIOT Act constitutional was for the FBI to inform each recipient of their right to challenge the gag order. He stated that it was reasonable for recipients to remain gagged unless a court were to lift the nondisclosure requirement.

American Library Association President Jim Rettig hailed the ruling as "protect[ing] our First Amendment freedoms by placing reasonable limitations on the FBI's ability to impose a gag order when issuing National Security Letters" as well as "requiring meaningful judicial review when an NSL gag order is challenged"—a process that stretched to eighteen months for four Connecticut librarians who successfully fought the NSL they received in 2005. However, he also expressed concern that the decision "does not address the constitutionality of the FBI's use of NSLs to obtain an individual's personal data."

ALA and its Freedom to Read Foundation were among the groups filing *amicus curiae* briefs on behalf of the plaintiffs. Reported in: *American Libraries Online*, December 23.

privacy

Washington, D.C.

In a rare public ruling, a secret federal appeals court has said telecommunications companies must cooperate with the government to intercept international phone calls and e-mail of American citizens suspected of being spies or terrorists.

The ruling came in a case involving an unidentified company's challenge to 2007 legislation that expanded the president's legal power to conduct wiretapping without warrants for intelligence purposes. But the ruling, handed down in August 2008 by the Foreign Intelligence Surveillance Court of Review and made public January 15

did not directly address whether President Bush was within his constitutional powers in ordering domestic wiretapping without warrants, without first getting Congressional approval, after the terrorist attacks of 2001.

Several legal experts cautioned that the ruling had limited application, since it dealt narrowly with the carrying out of a law that had been superseded by new legislation. But the ruling is still the first by an appeals court that says the Fourth Amendment's requirement for warrants does not apply to the foreign collection of intelligence involving Americans. That finding could have broad implications for United States national security law.

The court ruled that eavesdropping on Americans believed to be agents of a foreign power "possesses characteristics that qualify it for such an exception." Bruce M. Selya, the chief judge of the review court, wrote in the opinion that "our decision recognizes that where the government has instituted several layers of serviceable safeguards to protect individuals against unwarranted harms and to minimize incidental intrusions, its efforts to protect national security should not be frustrated by the courts."

The three-judge court, which hears rare appeals from the full Foreign Intelligence Surveillance Court, addressed provisions of the Protect America Act, passed by Congress in 2007 amid the controversy over Bush's program of wiretapping without warrants. It found that the administration had put in place sufficient privacy safeguards to meet the constitutional standards of the Fourth Amendment's ban on unreasonable searches. Because of that, the company had to cooperate, the court said.

That finding bolstered the Bush administration's broader arguments on wiretapping without warrants, both critics and supporters said.

William C. Banks, a law professor at Syracuse University who has criticized the administration's legal position on eavesdropping, said that while the ruling did not address Bush's surveillance without warrants directly, "it does bolster his case" by recognizing that eavesdropping for national security purposes did not always require warrants.

Coming in the final days of the Bush administration, the ruling was hailed by the administration and conservatives as a victory for an aggressive approach to counterterrorism. The Justice Department said in a statement that it was "pleased with this important ruling."

"It provides a very good result; it reaffirms the president's right to conduct warrantless searches," said David Rivkin, a Washington lawyer who has served in Republican administrations.

Representative Peter Hoekstra of Michigan, the ranking Republican on the House Intelligence Committee, said the ruling "reinforces the significant, bipartisan political consensus" in favor of the president's broad assertions of wiretapping powers.

But others were cautious about the significance of the ruling.

"I think this kind of maintains the status quo," said Scott Silliman, an expert on national security law at Duke University. "I don't think it is a surprise that the FISA court found that the legislation was constitutional. They are going to defer to Congress, especially since there was a lot of discussion when the law was passed about the ability of the government to compel providers."

The ruling is the latest legal chapter in a dispute dating back to the aftermath of the September 11 attacks, when Bush secretly ordered the National Security Agency to eavesdrop on the international communications of American citizens without the approval of Congress or the courts. After the agency's program was publicly disclosed in December 2005, critics said it violated a 1978 law. The White House initially opposed any new legislation to regulate surveillance, arguing that it would be an infringement of the president's powers.

But after the Democrats took control of Congress in the 2006 midterm elections, the administration agreed to bring the NSA program under the jurisdiction of the FISA court. In 2007, Congress passed the Protect America Act, which was replaced in 2008 by another surveillance law.

The case arose in 2007, when a telecommunications company refused to comply with the government's demands that it cooperate without warrants under the terms of the Protect America Act. The company was forced to comply, under threat of contempt, while it challenged the law in the FISA court, the opinion noted.

The company argued that the law violated the constitutional rights of its customers and that the act placed too much power and discretion in the hands of the executive branch. It also raised specific privacy problems, which the court ruling did not identify, that could occur under the surveillance directives it had received from the government.

In rejecting the company's complaint, the FISA appeals court found that the administration had so carefully carried out the Protect America Act that it was not in violation of the Fourth Amendment. It concluded that the procedures put in place under the law properly balanced the constitutional rights of American citizens and the national security interests of the government.

The company argued that "by placing discretion entirely in the hands of the executive branch without prior judicial involvement, the procedures cede to that branch overly broad power that invites abuse," the court wrote.

But, the court ruled, "this is little more than a lament about the risk that government officials will not operate in good faith. That sort of risk exists even when a warrant is required," it said. Reported in: *New York Times*, January 16.

Sacramento, California

A federal judge on January 29 denied a request by supporters of California Proposition 8 to withhold disclosure of late campaign donors to the same-sex marriage ban,

approved by voters in November, saying the public has a right to know.

Claiming donors have been harassed, attorneys for Proposition 8 had sought a preliminary injunction to keep secret the identities of 1,600 donors who made contributions just before or after voters approved the measure. They asserted that First Amendment rights to be free from retaliation outweigh the state's interest in disclosure.

But U.S. District Court Judge Morrison England Jr. sided with the state after hearing more than an hour of oral arguments in Sacramento. "The court finds the state is not facilitating retaliation by compelling disclosure," England said.

Late donations were scheduled to be filed to the state by February 2, which Yes on 8 campaign attorneys argued would unleash a new round of retaliation against donors, including some whose businesses have been boycotted.

Lawrence Woodlock, an attorney for the state Fair Political Practices Commission, argued most of the activity the plaintiffs called harassment was actually protected free speech, such as boycotts, and those are not subject to criminal prosecution.

In denying the injunction, England said public disclosure is especially important in initiative campaigns because many campaign committees have vague names that obscure who is giving money.

"If there's ever a need to bring sunshine on a political issue, it is with a ballot measure," England said.

The Yes on 8 campaign submitted declarations by donors who claimed they have been harassed by e-mails, phone calls, postcards and even received death threats. Richard Coleson, a Indiana-based elections law attorney hired by the campaign, told the court the harassment is having a "chilling" impact on donors. He said some frightened donors say they will not contribute to defeat a ballot challenge to Proposition 8 that is being threatened by opponents if the California Supreme Court upholds its constitutionality.

Frank Schubert, Yes on 8 campaign manager, said he was disappointed the court did not grant a preliminary injunction. But he said the campaign would continue to press its case in Sacramento and "possibly" appeal to the U.S. Court of Appeal for the Ninth District in San Francisco.

Roman Porter, executive director of the Fair Political Practices Commission, called the ruling "a victory for the people of California."

"The commission," he said, "will continue to vigorously defend any suit brought against disclosure of campaign statements."

California's Political Reform Act, which voters approved in 1974, requires the name, occupation and employer of any individual who makes a campaign contribution of $100 or more. The Yes on 8 campaign challenged the legality of the $100 limit, arguing in court that relatively small donors are being harassed because the limit has not been adjusted for inflation.

The judge declined to raise the limit, noting that most states have lower limits. He also dismissed the campaign's contention that it qualified for a narrow exception to campaign-donation disclosure laws granted by the U.S. Supreme Court for the NAACP in Alabama and Socialist Workers Party in Ohio.

England said the thousands of donors who contributed to Proposition 8 are not members of a group or political party, but diverse individuals.

Zackery Morrazzini, an attorney for Attorney General Jerry Brown and Secretary of State Debra Bowen, who were also named in the suit, said likening the Proposition 8 campaign to the NAACP and Socialist Workers Party was a stretch. Those groups, he said, had a long history of being harassed and threatened. Reported in: *Sacramento Bee*, January 30.

access to information

Washington, D.C.

A federal judge dismissed a lawsuit January 19 that sought to force former Vice President Dick Cheney to give to the National Archives all his records pertaining to his Executive Branch duties. The decision of U.S. District Court Judge Colleen Kollar-Kotelly ended a five-month injunction mandating the preservation of Cheney's records, and came only two weeks after the House overwhelmingly passed a bill that voided Executive Order 13233, in which President George W. Bush gave the incumbent or former presidents and vice presidents, as well as their heirs, latitude to withhold the release of presidential papers indefinitely.

In a 63-page ruling, Judge Kollar-Kotelly stressed that the plaintiff, Citizens for Responsibility and Ethics in Washington (CREW), did not present any evidence that the Office of the Vice President (OVP) planned to withhold or destroy records that should be archived, despite the inability or unwillingness of OVP to "maintain consistent factual positions." She wrote that, because the Presidential Records Act of 1978 "incorporates an assumption made by Congress . . . that subsequent Presidents and Vice Presidents would comply with the Act in good faith . . . Congress limited the scope of judicial review and provided little oversight authority for the President and Vice President's document preservation decisions."

Praising "organizations like the American Library Association for having finally gotten the public's attention about the importance of these records," CREW Chief Counsel Anne Weismann said that the group had sixty days to decide whether to appeal, but that "the Bush administration's treatment of presidential records and federal records

has really highlighted that there are loopholes in the law that need to be plugged." Among the legislative remedies Weismann favors is "a greater role for the archivist" in delineating what needs to be kept and an effective record-keeping system for tactile and electronic records. "It's important that the ground rules be clarified from the outset for the current administration," she said.

Ironically, the Obama administration now finds itself in the position of defending Bush-era e-mail-retention practices in an ongoing lawsuit brought by CREW and the National Security Agency in 2007. The Bush administration objected January 15 to "a pretty broad preservation order" issued the day before, Weismann explained, noting that the situation puts the Obama administration's Justice Department in the awkward position of "defending policies and practices that aren't theirs [with] limited access to info about the lawsuit." Reported in: *American Libraries Online*, January 30.

visas

Boston, Massachusetts

A federal court in Boston ruled December 8 that it had the power to review whether the Bush administration has a valid reason for denying a visa to the South African political scientist Adam Habib, a civil-rights activist and scholar of democracy and governance.

The ruling overcame a significant hurdle for the lawsuit, which argues that the State Department must provide a specific rationale for denying Habib's application for a visa last year. That denial was made by U.S. consular office in South Africa, which cited a statute that makes an applicant who "has engaged in a terrorist activity" ineligible for a visa but gave no further explanation.

Normally, consular decisions are not subject to review by the judicial branch. But the law allows the U.S. attorney general to waive ineligibility rulings, if recommended by the State Department, and the department declined to recommend a waiver for Habib.

The plaintiffs in the case argue that the department barred Habib because of his political beliefs, thus violating their First Amendment rights to hear him speak and to debate with him in the United States.

The plaintiffs include the American Association of University Professors, the American Sociological Association, and a few other organizations that had invited Habib to speak in the United States. The American Civil Liberties Union filed the lawsuit on behalf of those associations and Habib, who was included in the litigation as a "symbolic plaintiff."

In the ruling, Judge George A. O'Toole Jr. of the U.S. District Court in Boston said that the court could consider the case based on the First Amendment claim, and denied the government's request to summarily dismiss the charges.

The suit had named as defendants both the secretary of state and the secretary of homeland security. But Judge O'Toole dismissed the secretary of homeland security as a defendant, because that department played no role in the decision that barred Habib. It also dismissed Habib as a plaintiff because he is not a U.S. citizen and thus has no protections under the First Amendment.

Lawyers for the plaintiffs hailed the ruling as a victory in a struggle against Bush-administration policies that have excluded a number of foreign scholars from entering the United States. "The global exchange of ideas matters, particularly in the academic world," Melissa Goodman, a staff lawyer for the American Civil Liberties Union, said in an interview. "Getting another ruling that says you can't exclude scholars with no reason," she said, may help persuade the government "to stop the practice of excluding scholars based on ideology."

Sally T. Hillsman, executive officer of the American Sociological Association, said her organization was "gratified that the court ruled that this case can go forward."

"The government's actions have already prevented Professor Habib from attending two American Sociological Association conferences," Hillsman said in a written statement released by the ACLU. "We believe that the global exchange of knowledge is vital to the advancement of science, and we are hopeful that today's ruling will facilitate the free exchange of ideas."

Habib, who has been a vocal critic of the war in Iraq and other U.S. policies, was deported upon arrival at a New York airport in 2006, without being given a specific reason. When he applied for a new visa last year, Habib received a letter from the U.S. government saying his application was denied for having "engaged in terrorist activities."

Habib is now a political scholar and a senior administrator overseeing research, innovation, and advancement at the University of Johannesburg, in South Africa. He has denied any involvement in terrorist activities, saying it is "utterly absurd that anyone would associate me with terrorism."

The U.S. government will now need to convince the District Court that it had a valid reason for the visa denial. Though the precedent is somewhat unclear regarding what would constitute a valid reason, Goodman, the ACLU lawyer, said prior cases suggested the government would need to cite concrete evidence that a specific U.S. statute had been violated.

Habib is among a number of foreign scholars who have been denied visas with little or no explanation in recent years. One of them, Tariq Ramadan, is a prominent European Muslim scholar who was prevented from taking a teaching position at the University of Notre Dame when his visa was revoked in 2004. A federal court in New York ruled last year that the government had acted legally in deny-

ing a visa to Ramadan. The ACLU has filed an appeal of that decision. Reported in: *Chronicle of Higher Education* online, December 9.

labor rights

Lawrence Township, New Jersey

Scabby the Rat may not have a word to say, but the large rodent-shaped balloon helped a labor union earn a free-speech victory February 5 before New Jersey's highest court. The seven justices ruled unanimously that the local union had a right to display its ten-foot-tall, black, rat-shaped balloon at a rally held outside a fitness center.

At issue was whether a township could enforce a ban on inflatable or portable signs and banners on public property. Lawrence Township police had levied a $100 fine against an official from the International Brotherhood of Electrical Workers because of Scabby.

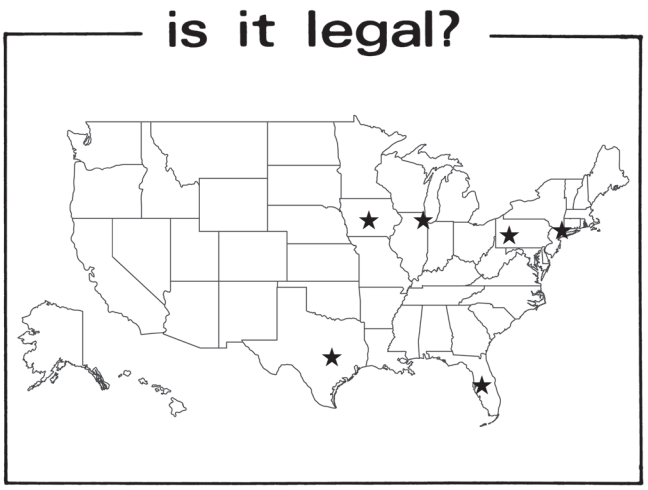
The court concluded that while townships have a right to maintain an "aesthetic environment" and ensure public safety, its restrictions on expressive displays "do not justify a content-based restriction of non-commercial speech."

"There is no evidence to suggest that a rat balloon is significantly more harmful to aesthetics or safety than a similar item being displayed as an advertisement or commercial logo," wrote Justice John Wallace Jr.

The balloon and others like it, nicknamed Scabby by the Chicago-based company that made them, have been used by labor unions as street theater since 1990 to protest anti-union activities.

IBEW members were marching on the sidewalk outside Gold's Gym in Lawrence Township in April 2005 in response to a dispute with a contractor working at the business. A police officer had ordered the balloon deflated, but returned an hour later to find it blown back up. The labor official in charge admitted he ordered the rat reinflated and he was given a summons.

Lower state courts had ruled the township's ordinance was content-neutral and did not suppress the union's ability to spread its message, since members still could chant and distribute handbills to the public. Reported in: cnn.com, February 6. □



schools

Pembroke Pines, Florida

A former South Florida high school student is suing to challenge a three-day suspension that she incurred after creating an off-campus Web site that criticized her English instructor as "the worst teacher I've ever met" and invited others to post additional criticisms.

Katherine Evans, a former student at Pembroke Pines Charter High School alleges that the November 2007 disciplinary action—which also included removing her from Advanced Placement classes that carried bonus grade-point-average weight—violated her First Amendment rights.

Attorneys for Evans filed a complaint December 8 in the U.S. District Court for the Southern District of Florida, seeking a declaration that Principal Peter Bayer violated her constitutional rights, along with an order directing the school to purge all mention of the discipline from Evans' record, nominal monetary damages and attorney fees.

The dispute stems from a page that Evans posted on Facebook, a social-networking Web site, denouncing her AP English teacher for her "insane antics" and inviting others to "express your feelings of hatred" by posting messages to the site. According to the complaint filed with the court, the Web site was up for only two days, over a weekend, and was not seen by the teacher before Evans voluntarily pulled it down. The Facebook site attracted only three posted comments, all of them supporting the teacher and criticizing Evans.

Evans was disciplined on the grounds of violating Broward County school board policies against "Bullying / Cyber bullying / Harassment towards a staff member" and "Disruptive behavior," according to a copy of her Notice of Suspension attached to the complaint.

The complaint contends that punishing Evans for purely off-campus speech that created no disruption at school violated her right to free speech. Attorneys Randall Marshall and Maria Kayanan of the American Civil Liberties Union of Florida staff and outside legal counsel Matthew D. Bavaro filed the complaint.

"Students cannot be punished for posting comments online from their home computers criticizing their teachers. Absent a credible threat of harm, criticism is protected by the First Amendment," Kayanan, associate legal director of the ACLU of Florida, said in a news release.

A complaint represents merely the allegations of one side in a legal dispute, and the other side is permitted to file an answer responding to the allegations. Charles Dodge, superintendent of the Pembroke Pines charter school system, told the *South Florida Sun-Sentinel* that he was unaware of the lawsuit and could not comment.

Student online speech is a prolific area of First Amendment litigation. The U.S. Court of Appeals for the Third Circuit heard oral arguments December 10 in the case of *Layshock* v. *Hermitage School District*, in which a Pennsylvania school district is appealing a lower court's ruling that the district violated a student's First Amendment rights by suspending him for posting sarcastic comments mocking his principal on a MySpace page. Reported in: splc.org, December 9.

Austin, Texas

The latest round in a long-running battle over how evolution should be taught in Texas schools began in earnest January 21 as the State Board of Education heard impassioned testimony from scientists and social conservatives on revising the science curriculum. The debate has far-reaching consequences; Texas is one of the nation's biggest buyers of textbooks, and publishers are reluctant to produce different versions of the same material.

Many biologists and teachers said they feared that the board would force textbook publishers to include what skeptics see as weaknesses in Darwin's theory to sow doubt about science and support the Biblical version of creation.

"These weaknesses that they bring forward are decades old, and they have been refuted many, many times over," Kevin Fisher, a past president of the Science Teachers Association of Texas, said after testifying. "It's an attempt to bring false weaknesses into the classroom in an attempt to get students to reject evolution."

In the past, the conservatives on the education board have lacked the votes to change textbooks. This year, both sides say, the final vote, in March, is likely to be close.

Even as federal courts have banned the teaching of creationism and intelligent design in biology courses, social conservatives have gained 7 of 15 seats on the Texas board in recent years, and they enjoy the strong support of Gov. Rick Perry, a Republican. The chairman of the board, Dr. Don McLeroy, a dentist, pushed in 2003 for a more skeptical version of evolution to be presented in the state's textbooks, but could not get a majority to vote with him. McLeroy has said he does not believe in Darwin's theory and thinks that Earth's appearance is a recent geologic event, thousands of years old, not 4.5 billion as scientists contend.

On the surface, the debate centers on a passage in the state's curriculum that requires students to critique all scientific theories, exploring "the strengths and weaknesses" of each. Texas has stuck to that same standard for twenty years, having originally passed it to please religious conservatives. In practice, teachers rarely pay attention to it. This year, however, a panel of teachers assigned to revise the curriculum proposed dropping those words, urging students instead to "analyze and evaluate scientific explanations using empirical evidence."

Scientists and advocates for religious freedom say the battle over the curriculum is the tip of a spear. Social conservatives, the critics argue, have tried to use the "strengths and weaknesses" standard to justify exposing students to religious objections in the guise of scientific discourse.

"The phrase 'strengths and weaknesses' has been spread nationally as a slogan to bring creationism in through the back door," said Eugenie C. Scott of the National Center for Science in Education, a California group that opposes watering down evolution in biology classes.

Already, legislators in six states—Alabama, Florida, Louisiana, Michigan, Missouri, and South Carolina—have considered legislation requiring classrooms to be open to "views about the scientific strengths and weaknesses of Darwinian theory," according to a petition from the Discovery Institute, the Seattle-based strategic center of the intelligent-design movement.

Stephen C. Meyer, an expert on the history of science and a director at the Discovery Institute, denied that the group advocated a Biblical version of creation. Rather, Meyer said, it is fighting for academic freedom and against what it sees as a fanatical loyalty to Darwin among biologists, akin to a secular religion. Testifying before the board, he asserted, for instance, that evolution had trouble explaining the Cambrian Explosion, a period of rapid diversification that evidence suggests began about 550 million years ago and gave rise to most groups of complex organisms and animal forms.

Of the Texas curriculum standards, Meyer said, "This kind of language is really important for protecting teachers who want to address this subject with integrity in the sense of allowing students to hear about dissenting opinions."

But several biologists who appeared in the hearing room said the objections raised by Meyer and some board members were baseless. The majority of evidence collected over the last 150 years supports Darwin, and few dissenting opinions have survived a review by scientists.

"Every single thing they are representing as a weakness is a misrepresentation of science," said David M. Hillis, a professor of biology at the University of Texas. "These are science skeptics. These are people with religious and political agendas."

Many of the dozens of people who crowded into the hearing room, however, seemed unimpressed with the body of scientific evidence supporting evolution. "Textbooks today treat it as more than a theory, even though its evidence has been found to be stained with half-truths, deception, and hoaxes," said Paul Berry Lively, 42, a mechanical engineer from Houston who brought along his teenage son. "Darwinian evolution is not a proven fact."

Other conservative parents told board members that their children had been intimidated and ridiculed by biology teachers when they questioned evolution. Some asserted that they knew biology teachers who were afraid to bring up theories about holes in Darwin's theory.

Business leaders, meanwhile, said Texas would have trouble attracting highly educated workers and their families if the state's science programs were seen as a laughingstock among biologists. "The political games we are playing right now are going to burn us all," said Eric Hennenhoefer, who owns Obsidian Software. Reported in: *New York Times*, January 22.

university

Chicago, Illinois

A proposed policy at Northeastern Illinois University would require protesters to submit copies of fliers and signs to administrators two weeks before bringing them on the campus, sparking criticism from free speech advocates.

The policy, introduced more than a year after two students were arrested while protesting CIA recruiters on campus, is intended to clarify university rules—not to stifle speech, according to Sharon Hahs, president of the university. The university wants to keep a record of materials distributed on campus, but does not intend to prevent lawful demonstrations, she said.

"It would not be used to decide whether you may or may not hand it out," she said. "You just must submit a copy of it."

Asked about the rationale for prior review of materials, Hahs said Northeastern Illinois administrators are addressing potential security concerns. Particularly in the wake of recent shootings on college campuses, administrators are "expected to know" about activities on university grounds, she said.

"One of the pieces of information that might be helpful some day, some time, is what groups are on your campus and what materials are they handing out," Hahs said.

The policy has garnered the endorsement of the Student Government Association and a group representing state employees on campus, but the Faculty Senate has yet to give its approval. The Foundation for Individual Rights in Education (FIRE) called the policy "blatantly unconstitutional," and a blogger on free speech issues suggested "the entire policy needs to be tossed."

"That's really over the top, the idea that you have to turn in your visual communications a week in advance," said John Wilson, a blogger at collegefreedom.org and author of *Patriotic Correctness: Academic Freedom and Its Enemies*. "I've never seen anything quite that restrictive at a public university before."

The new policy includes "newspapers" under the definition of "visual communications," but Hahs assured that the campus's student newspaper would not be required to submit its publication to administrators in advance. Only "a random newspaper that has nothing to do with the university" would be subject to prior review, she said.

Other restrictions in the policy forbid demonstrations in particular buildings and limit protests to particular hours. Both restrictions, however, can be lifted in certain cases, according to the policy.

The Northeastern Illinois policy was created by a special university panel that included faculty and staff members and students. The group was working on the policy as early as 2006, before Matthew Larson and Kenneth Barrios, two members of an anti-war student group, were arrested while protesting the CIA. The students were charged with battery.

"Defenders of student actions at these events argue that the students were asserting their right to free speech," Hahs wrote in a 2007 newsletter. "This argument assumes that freedom of speech is subject to no restrictions. This is simply not the case, nor should it be."

Hahs theorizes that the university's career fair, which has "acquired a reputation as a contentious and inhospitable environment," has been sparsely attended because employers and military recruiters expect to be heckled by protesters. Hahs said that she would be open to protesters demonstrating outside the event, but that the university needs a policy that will prevent protesters from disrupting the event itself.

It's not just employers who have faced protests on the campus. Students have also been on the receiving end. A group known as Heterosexuals Organizing for a Moral Environment, or HOME, has distributed "bizarre, homemade hate literature" on campus for years, according to Erica Meiners, a faculty adviser to the campus Lesbian Gay Bisexual Transgender Queer group.

Students affiliated with the gay student group approached administrators with concerns about HOME, and Hahs said the task force may have considered the concerns when crafting the new policy. But Meiners said the group never intended for a crackdown on speech.

"The curtailing of free speech was not what the LGBTQ students wanted when they asked the administration to 'do something,'" Meiners wrote in an e-mail. "LGBTQ students wanted a more robust, visible commitment to educating the campus about LGBTQ lives and communities. Some of the things they asked the administration for included training for staff and faculty around LGBTQ issues and an LGBTQ resource center, support for a LGBTQ studies program, and more."

Recent free speech issues at Northeastern Illinois have also prompted a lawsuit from a faculty member, who alleged that she was retaliated against for supporting the students who challenged the CIA recruiters, among other issues. Loretta Capeheart, an associate professor in the department of justice studies, claimed she was denied a position as department chair—even after colleagues elected her to the post—because of her outspoken views.

Capeheart's initial suit against the university was dismissed, but she has filed an amended complaint against Hahs and several other administrators. Capeheart could not be reached for comment Monday, but her lawyer said he views the proposed speech policy as part of a larger pattern of challenges to the First Amendment.

"I found it very surprising, the issuance of this proposed code for speech," said Tom Rosenwein, Capeheart's lawyer. "It seems like a tremendous overreaction and is basically very hard to understand in the context of an academic institution, where presumably the free expression and clash of ideas is not only encouraged but is cherished." Reported in: insidehighered.com, December 23.

privacy

Des Moines, Iowa

Iowa governments would have greater authority to black out personal information from public records under proposals recommended by a legislative committee. Advocates say the proposals would protect citizens from identity theft. But opponents say the unintended results could be alarming, particularly if the public is unable to differentiate between, for example, a convicted sex offender and another citizen with the same name.

"The public has more to fear from government records containing information about them of which they are unaware than the release of information pertaining to them," said Bill Monroe, executive director of the Iowa Newspaper Association.

Lawmakers formed the Identity Theft Prevention Study Committee, which met in November, to consider how the release of personal information in Iowa could make residents vulnerable to identity theft. Public concern heightened when privacy advocates complained about a land records

site, IowaLandRecords.org. The Social Security numbers of thousands of Iowans from all 99 counties were listed on the site, including those of Gov. Chet Culver and Secretary of State Michael Mauro.

Administrators of the site quickly shut down the ability to view details of the records after the advocates pointed out the problem. The group says removing personal information from all the records—called redaction—will cost the state as much as $2.3 million, which includes $500,000 to update its computer programs.

Culver said that he agrees steps should be taken to redact personal information from public records that can be used to steal Iowans' identities. However, he said he was not sure how the state would pay for such efforts. County recorders, for example, have proposed increasing an electronic filing fee from $1 to $3 to pay for the redaction effort.

"I think protecting individuals' identity is important," Culver said. "Once it gets to the level of security risk, we should take steps to limit how far we go in terms of disclosing things like Social Security numbers."

The committee made eleven recommendations, several of which would give governments more power to remove Social Security or bank account numbers.

Open-records advocates generally agree that some sensitive information like credit card numbers should not be released. The problem arises if governments redact information such as dates of birth, addresses, or other unique identifiers, said Kathleen Richardson of the Iowa Freedom of Information Council.

Richardson said lawmakers need to establish how frequently identity theft occurs through public records. She believes the problem is rare. "I think there needs to be a demonstrated need of why we need to vacuum public records," Richardson said. "We also have to carefully consider what our definition of personal information is and make sure it's not so broad that it wipes out too much information."

Sen. Steve Warnstadt, D-Sioux City, said the committee tried to be sensitive to the concerns brought forward by open records advocates when making its recommendations.

"The point of this is not to restrict access. The point is to prevent identity theft and personal information from being disclosed from people who don't have a legitimate reason to have that information," said Warnstadt, the committee co-chairman. Reported in: *Des Moines Register*, January 3.

New York, New York

Sony BMG Music Entertainment has been sued by the United States for collecting and disclosing personal data about 30,000 young children without informing their parents. The Federal Trade Commission filed a civil lawsuit December 10 in Manhattan federal court. The suit, which alleges violations of the Children's Online Privacy Protection Act, seeks unspecified money damages and an injunction.

"Sony Music collected, used, and/or disclosed personal information from children without first providing their parents with notice of its information practices," the complaint says.

The FTC claims Sony Music, a Sony unit that operates more than 1,100 music-related Web sites, collected information from more than 30,000 children under age 13 since 2004, despite claiming on its sites that visitors that young wouldn't be allowed to register.

Sony agreed to pay a $1 million fine and hire a compliance officer who will put a screening process in place to prevent the collection of such data, according to two people close to the agreement who declined to be identified.

The sites collected information such as names, addresses, mobile phone numbers, e-mail addresses, dates of birth, ZIP codes, usernames, and gender, the FTC said. Reported in: Bloomberg News, December 10.

child pornography

Greensburg, Pennsylvania

There are a number of reasons to think twice before sending a nude photo of yourself to someone electronically. But, if you're under the age of 18, there's at least one big, glaring, serious reason: you and the recipient could be charged with trafficking in child pornography. That is what happened in Greensburg after two teenage girls sent nude photos to some teenage boys.

Two girls from Greensburg, who police say are "14 or 15" years old, allegedly sent nude photos to two boys who are slightly older than them (16 or 17) using their cell phones. The photos were discovered in October after one of the youngsters was caught using a cell phone during school hours—a violation of school rules—and had the phone taken away. The photos were discovered at that time and turned over to police.

"It was a self portrait taken of a juvenile female taking pictures of her body, nude," Greensburg Police Department captain George Seranko told WPXI News. "Taking nude pictures of yourself, nothing good can come out of it."

In December the National Campaign to Prevent Teen and Unplanned Pregnancy released survey results that said 20 percent of all teens have sent a nude photo of themselves to someone else electronically. More than two thirds of those who have sent photos claim they sent them to a boyfriend or girlfriend, but 15 percent say they have sent them to people they only "know" from the Internet. And they're not staying private, either—a quarter of teen girls and a third of teen boys said that they've had nude images originally meant for someone else shared with them.

Though the discovery was made several months earlier, the Greensburg Police Department apparently decided to

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success stories

libraries

Ankeny, Iowa

Ankeny school board members voted 6–1 December 15 to keep a book about two male penguins who raise a chick together in circulation at two elementary school libraries. They also voted to begin work toward a new process to select material for school libraries. The book, *And Tango Makes Three*, would likely come under review after the new process is put in place.

School board member Pat Cahill asked whether the book belonged in a parents-only section of the library, a request parents Cindy and James Dacus made earlier. But the school attorney said such a move would be difficult to defend in court. School board member Trent Murphy cast the lone no vote.

The challenge received a higher-than-usual degree of interest, not only from Ankeny residents but also from national advocacy groups that have sent letters to the district. The book's authors weighed in, writing a letter to the board members urging them to protect young readers' access to the book.

The book is in open circulation at the East Elementary School library, where it was checked out last year by the then-kindergartner of Cindy and James Dacus. The Ankeny parents asked the school board in November to place the book in a parents-only section, arguing that it "normalizes" homosexuality to children too young to understand the "risky lifestyle."

Dr. Justin Richardson, who wrote *And Tango Makes Three* with his partner Peter Parnell, said that they wrote the book with two audiences in mind: For kids who have two mothers or two fathers, so they can see themselves represented in literature, and for those kids' peers, whose parents might otherwise struggle to explain same-sex families. Richardson and Parnell are themselves expecting to have a daughter in March with the help of an egg donor and surrogate mother.

"It's very much an attempt not to talk about sexuality, and not to promote a certain kind of sexuality," Richardson said, "but to talk about a different kind of family in a way that, in our minds, was quite far from sexual topics that tend to make parents uncomfortable."

Richardson was skeptical of a suggestion from Ankeny Superintendent Matthew Wendt to put in place a new process for selecting school library materials. At the December 1 board meeting, Wendt said that the system of a single librarian selecting materials was outdated, and that the process should be more collaborative.

Richardson, saying he didn't know Wendt's intent, warned that such a system could become a "legal loophole, but is certainly no less problematic than pulling a book because a parent has complained about it. In fact," he added, "it's more troubling to think a school might screen out a book because a parent might complain about it in the future. That could really limit the kind of books that children have access to." Reported in: *Des Moines Register*, December 14, 15.

Beulah, North Dakota

Superintendent Rob Lech handed the book to three Beulah High School students who carried it down the hall and put it back on the shelf of their high school library January 19. The book, *Midnight in the Garden of Good and Evil*, by John Berendt, a 1994 runaway nonfiction bestseller had been banned from the library for four days, following a decision by the Beulah School Board to remove it at the request of two parents.

With about 25 people in attendance, the board reversed its decision at the encouragement of board President Phil Eastgate, who said the board moved too fast and unleashed a possible court case it would never win. He said there might be more palatable alternatives, like creating a list of restricted books that parents have to approve before their children can check them out. A decision to review school policies and investigate less-restrictive means to control library books was approved by the school board.

Keith and Kathy Bohn, both school employees, followed school policy to request removing the book after their son brought it home from an accelerated-reading program, in which students pick from a couple of hundred titles. They said it was too pornographic and at odds with student behavior promoted in the school handbook.

After the reversal, Bohn only said he was following the process all along and respected the board's decision.

Lech said the board may have followed the policy, but missed at least one step, "including reading the book. We know it's a dark, ugly book, but sometimes the world is a dark, ugly place." Lech also warned the board that causing the school to create a list of restricted books could cause the same judgment problems as removing one book, only on a larger scale.

Tina Heller, the school's English teacher, asked who will make that judgment. "Will this follow through into the classroom and our textbooks?" she asked.

Librarian Kathy Cline said it's her job to create a collection of books that suits everyone. She said it is better that kids read books like *Midnight*, "than television, where there's no room for imagination."

Karson Little Soldier, a high school senior, said afterward she didn't feel the board admitted it had made the wrong decision.

Hannah Zimmerman, also a senior, said, "It's not their library; it's our library."

Olivia O'Quinn, a senior, had a statement she would have read had everyone at the meeting been allowed a say if they wanted one. She said, "Banning books promotes ignorance." Reported in: *Bismarck Tribune,* January 20.

Halsey, Oregon

A controversial book of cartoons will remain, unrestricted, in the Central Linn High School library, the Central Linn School Board has decided. Board members voted 5–1 January 12, with Verne Hoyer dissenting and John Holbrook absent, to keep *The Book of Bunny Suicides*.

Subtitled, "Little Fluffy Rabbits Who Just Don't Want to Live Anymore," the 2003 book by British humorist Andy Riley depicts cartoon rabbits killing themselves in various ways, from sitting in front of a bobsled run to impaling themselves on Darth Vader's light saber.

Parent Taffey Anderson complained about the book in October after her 13-year-old son checked it out, saying initially she would burn it rather than return it. The story drew national attention and prompted readers to send the school district about 24 copies of the book.

Anderson later allowed the book to be reviewed by the district's seven-member committee, which consisted of board member Julie Smith plus a parent, a librarian, an administrator, two teachers and a site council representative. The committee returned a 6–1 recommendation to the board to keep the book, without restrictions, on library shelves. That recommendation prompted a passionate discussion by board members, who debated for more than an hour before deciding to wait for a full panel.

Publicity about the complaint drew national attention, including a letter from the American Civil Liberties Union of Oregon. Signed by Associate Director Jann Carson, the letter urged the district to keep the book, warning that removing it could violate the First Amendment. A better practice, Carson said, would be to allow parents to ask that their child not be allowed to check out a particular item.

Superintendent Ed Curtis said the district already allows parents to "opt out" of a particular book, whether in the library or in the classroom. He said the district may explore its library adoption procedure and will bring a recommendation to the board if changes are feasible.

Holbrook, Hoyer, and board member Pat McConnel voted in December to remove the book, but that motion failed on a 3–3 tie. At the next meeting, in January, David Goracke, who had missed the earlier meeting, joined McConnel, Julie Smith, and Chairman Rip Lewis in voting for McConnel's motion to keep the book on the shelves.

"I'm making this motion as a responsible board member, but not from my heart," McConnel said.

In a later interview, she said she was convinced by arguments from review committee members, who recommended keeping the book, that any other action would be censorship. "We can't censor," she said. "I'm here as a board member. I can't vote my personal feelings all the time."

"While I understand we do need to protect the kids, and that's part of our job being a board member, I just don't believe in censorship, and I feel like that's what this would have been," Smith said. "I didn't laugh at the book, I didn't really think, 'Oh, that's funny,' I just didn't see it as much different from cartoons I grew up with."

Smith said she would prefer librarians take more time to review books individually before deciding to purchase them for school shelves, rather than just going off top-10 lists or other recommendations. But once the book has been chosen, she said, she is loathe to remove or restrict it.

"We could all find something objectionable in our library. Does that give us the right to go in and take whatever anybody finds objectionable off the shelf?" she asked. Reported in: *Albany Democrat-Herald*, December 9, January 13.

schools

New Rochelle, New York

The New Rochelle Board of Education announced December 10 that it would immediately replace all 50 copies of Susanna Kaysen's memoir *Girl, Interrupted* which were distributed to students at New Rochelle High School two weeks earlier and undertake a review of district policy and practices regarding book selection. No mention was made of the district's "book challenge" policy which was at the heart of the *Girl, Interrupted* controversy.

Pages from the middle of the book were torn out by the school district after having been deemed "inappropriate" by school officials due to sexual content and strong language. Removed was a scene where the rebellious Lisa (played by Angelina Jolie in the movie adaptation) encourages

Susanna (played by Winona Ryder) to circumvent hospital rules against sexual intercourse by engaging in oral sex instead.

"The material was of a sexual nature that we deemed inappropriate for teachers to present to their students," said English Department Chariperson Leslie Altschul, "since the book has other redeeming features, we took the liberty of bowdlerizing."

After receiving complaints from an as yet-to-be-identified person or group, the school district ordered students to return the book to the chairperson of the English department who then personally tore out pages 64 through 70 before returning the books to students. Ironically, news of the school censorship first broke during the same week as the school district's annual Literary Festival.

The move was widely criticized. Both the National Coalition Against Censorship and the American Booksellers Foundation for Free Expression expressed their alarm at the actions of the school district. The story was a hot topic across the blogosphere, transcending political ideology. It was featured on the left-leaning Boing Boing, the most widely read blog in the world, as well as the top conservative site, Hot Air, which is owned by Michelle Malkin of Fox News. The *New Yorker* magazine and The *Atlantic Monthly* also picked up the story as well as dozens of blog sites focused on literary and free speech issues.

"Bowdlerizing is a particularly disturbing form of censorship since it not only suppresses specific content deemed 'objectionable,' but also does violence to the work by removing material that the author thought integral," said Joan Bertin, Executive Director of the National Coalition Against Censorship. "It is a kind of literary fraud perpetrated on an unsuspecting audience."

Schools Superintendent Richard Organisciak sought to minimize the significance of "minor" changes to the book and the impact of the school teaching from what he called a "slightly expurgated version" of the novel.

"The original decision to excise the pages was made at the building level," said Organisciak. The decision "would not have been reviewed either by the central administration or by the Board of Education."

Sources at the District confirmed that the district does have a book selection and book challenge process but those same sources claim the district failed to follow those policies in this case. "We should either teach a book or not teach a book," said one New Rochelle teacher who disagreed with the District's decision. "What sort of message do we send our students when we vandalize books?" While agreeing the content may not be suitable for all students, the teacher pointed out that the students involved were mostly 12th graders, including some who were over 18 years of age. "Does someone in the school think these kids don't know about sex?"

The book was originally added to the curriculum at the request of a teacher no longer employed by the district. It was taught without incident at least one year prior to the complaint. The chairperson admitted she did not read the book before approving it for use and only acted after receiving a complaint.

"The most shocking part of this story," said Chris Finan, President of the American Booksellers Foundation for Free Expression, "is that an English teacher in the 21st century would consciously emulate the example of Thomas Bowdler, a 19th century man who is infamous for his expurgations of Shakespeare!" Reported in: newrochelletalk .com, December 8, 10. □

Obama. . . from page 29)

dential records the property of the government, not former presidents. Under the law, former presidents and vice presidents can restrict access to some of their records, including confidential communications with advisers, for up to 12 years. After that, most documents must be made public.

Bush's order gave former presidents more authority beyond the 12-year period to claim executive privilege to withhold certain papers because they contain military, diplomatic or national security secrets, communications among the president and his advisers or legal advice. It said the U.S. archivist had to abide by a former president's decision to keep records private and said former vice presidents or the heirs of a former president who had died also could forbid the release of documents.

Obama's order limits claims of executive privilege to records concerning national security, law enforcement or internal communications. It also specifies that only living former presidents may request that papers not be made public and gives them thirty days to say so once they get word of the archivist's intention to release records. A request will be evaluated by the archivist, the White House counsel and the attorney general, under Obama's order. They can disregard the former president's wishes and allow for the release of the material, the order states.

Tom Blanton, director of the open-government advocate National Security Archive, said the order applies to former Vice President Dick Cheney's records. Cheney has been embroiled in a lawsuit over which of his records have to be handed over to the National Archives. On January 19, a federal judge ruled Cheney had broad discretion to determine which must be preserved. Those that are handed over to the Archives are no longer protected by executive privilege, according to Blanton.

Obama also reinstituted a presumption of disclosure for Freedom of Information Act requests about the workings of government.

Obama said he was directing agencies that vet requests for information to err on the side of making information public—not to look for reasons to legally withhold it. "For a long time now, there's been too much secrecy in this city," he said.

Government watchdogs cheered the move to change how open-records laws are interpreted as a sign of greater disclosure of agency information than during the Bush administration. Obama's instruction to federal agencies to be more responsive to FOIA requests is not the first time a president has pushed for wider release of information. The Carter and Clinton administrations had similar policies that called for agencies to err on the side of making materials public, rather than looking for reasons to legally withhold them.

But advocates said they believe Obama's administration will go further, using Web sites and other electronic media to give the public unprecedented access.

"The fact that Mr. Obama took these actions on his very first day in office signals a new era in government accountability," said Melanie Sloan, executive director of Citizens for Responsibility and Ethics in Washington. "He is turning the page and moving away from the secrecy of the last administration."

In a memo to agency heads, Obama explained that public-interest groups often make use of the law to explore how and why government decisions were made; they are often stymied as agencies claim exemptions. "In the face of doubt, openness prevails," Obama wrote. "The government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of government officials."

Obama also said agencies should actively seek ways to publicly release information. "They should not wait for specific requests from the public," the memo states. "All agencies should use modern technology to inform citizens about what is known and done by their government. Disclosure should be timely."

Experts said the full dimensions of the change won't be fully known until the attorney general issues the formal guidance to agencies within 120 days. But material ranging from government contracts to how banks are using taxpayer money from the bailout—which are subject to FOIA but often fall into legal gray areas—could now be subject to greater disclosure.

"This is dramatic," said Lucy Dalglish, executive director of the Reporters Committee for Freedom of the Press. "The most important thing a president can do is to reiterate that it is important for citizens to know what its government is up to. This is an incredible message he's sending out to federal agencies."

It's a major change from a Bush administration that actively sought to prevent disclosure based on the grounds of national security. It's also the latest in a three-decade-long ping pong game with FOIA policy.

In the late 1970s, Carter's attorney general, Griffin Bell, issued guidance to err on the side of releasing information. Under Reagan, William French Smith came in and reversed that; he told them, "when in doubt withhold." Then under Clinton, Janet Reno reversed it again; she told agencies their presumption should be for release.

But Bush Attorney General John Ashcroft went back the other way in October 2001, telling agencies he would defend any legal justification for withholding documents. Congress later sought to undercut Ashcroft's order, passing legislation in December 2007 that toughened FOIA by establishing a hot-line service to help people requesting

information deal with problems they may encounter and an ombudsman to provide an alternative to litigation in disclosure disputes.

Obama's directive effectively reversed Ashcroft's memo, restoring open-records laws largely to how they were interpreted during the Clinton administration.

Tom Curley, president and chief executive of the Associated Press, praised Obama's move after many years in which government "has worked at restricting the flow of information to Americans, bypassing the First Amendment."

"This step toward providing more access and making our government agencies more accountable can help build the people's confidence in government," he said.

Historians and archivists were generally delighted by Obama's move. But as they await the appointment of a new national archivist, some said that a great deal more work needs to be done to restore the health of the presidential-library system.

"President Obama did all the right things this week," said Frank Boles, president of the Society of American Archivists. "The core question goes back to the values of our democracy. When does the public find out, and under what terms and conditions, about the activities of public officials?"

Similar praise came from Bruce P. Montgomery, director of archives at the University of Colorado at Boulder and author of *The Bush-Cheney Administration's Assault on Open Government* (Praeger 2008). The Presidential Records Act of 1978, Montgomery said, "has really been a tortured instrument. Every president, in one way or another, has tried to diminish the law. This is the first time that a president has stood by the integrity of the statute. That's why Obama's executive order really stands out."

Boles and Montgomery added, however, that it was still important for Congress to amend the Presidential Records Act, in part to prevent future presidents from issuing orders like Bush's. The House of Representatives has passed such a bill twice—most recently on January 7, by a vote of 359 to 58. But the bill (HR 35) has been blocked in the Senate because various Republicans have placed holds on it.

And like many other scholars, Boles and Montgomery said that the National Archives and Records Administration is so severely understaffed that presidential records are released at an unreasonably slow pace. According to officials at the National Archives, as of May 2008, only 19 percent of the records at Ronald Reagan's library, 18 percent of the records at George H.W. Bush's library, and 2 percent of the records at Bill Clinton's library had been processed and opened.

Only eleven records totaling 64 pages (all from the Reagan administration) were ever actually withheld under privileges created by the Bush executive order on presidential records. In 2007, the national archivist, Allen Weinstein, who left that post in December, said that the dispute over the executive order had been overblown, given that so few records had been directly affected.

But to the critics, it was the principle that mattered, not the numbers. "Even though perhaps we don't know that this executive order was used in the way that we feared, the fact that it could have been abused made it dangerous," said Meredith Fuchs, general counsel of the National Security Archive.

Obama's new executive order essentially returns the system to its pre–2001 rules. Heirs of deceased presidents now have no right to invoke privileges.

"The basic thrust of this," said Stanley I. Kutler, a professor emeritus of history at the University of Wisconsin at Madison and a veteran of years of litigation over the release of President Richard M. Nixon's records, "is that you and I can meet on January 20, 2021, and review the records of George W. Bush's administration. It's not nirvana."

Kutler and others want Congress to spend much more money on archivists for presidential libraries, though they realize that isn't likely at a time of fiscal crisis.

"The processing is slow, no matter what institution you look at," said Montgomery. "They're just absolutely overwhelmed with tens of millions of pages. They have a staff of five to eight people, maybe ten. It's very difficult to go through that kind of material very quickly."

Now scholars are awaiting the appointment of a new national archivist. "Obama really seems to care about these issues," said Fuchs, "so I can't imagine that they would leave this vacant very long."

In December, eleven scholarly organizations released an open letter to Obama that listed the qualities they sought in a new archivist, including a "commitment to the principle of public ownership of government records."

Montgomery, for one, believes that the archivist's position should be fundamentally rethought. Disputes over the Presidential Records Act, he said, have inevitably politicized the National Archives. To mitigate that, Montgomery said, "we really need to make this appointment more independent, much like the comptroller general of the General Accountability Office. He's given a 15-year appointment, and therefore he's really not subjected too much to the political crosswinds of Washington." Reported in: Associated Press, January 22; *Chronicle of Higher Education* online, January 26. □

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including posters, bookmarks, t-shirts, and tote bags, are sold and marketed through ALA Graphics (http://www.alastore.ala.org/). More information on Banned Books Week can be found at http://www.ala.org/bbooks.

Lawyers for Libraries

Lawyers for Libraries, an ongoing OIF project, is creating a network of attorneys involved in, and concerned with, the defense of the freedom to read and the application of constitutional law to library policies, principles, and problems.

Thirteen regional training institutes have been held since 2002, in Boston, Chicago, Dallas, San Francisco, Washington, D.C., Atlanta, Seattle, Columbus, Houston, Seattle, Philadelphia, Denver, and most recently in Tampa. Prior to that, two grant-funded trainings were held in Chicago for representatives from each state chapter. Our only scheduled training for 2009 will be in Los Angeles on February 27. Registration for the Los Angeles training is ongoing.

To date, over 400 attorneys, trustees, and librarians have attended these trainings, and an e-list has been created to allow for ongoing communication on questions of policy and best practices. Those attending the institutes have proved invaluable to their institutions in terms of protecting them from liability and violations of intellectual freedom; they also have been of great assistance to OIF when cases of local censorship or privacy violations have arisen.

Topics addressed at the trainings include the USA PATRIOT Act, Internet filtering, the library as a public forum, meeting room and display area policies, and how to defend against censorship of library materials. For more information about Lawyers for Libraries, visit www.ala.org/lawyers or contact Jonathan Kelley at jokelley@ala.org or 1-800-545-2433, ext. 4226.

Law for Librarians

The training held in May 2006 for state intellectual freedom committee chairs resulted in hundreds of local-level trainings for librarians on the legal aspects of intellectual freedom and how these should inform library policies and procedures.

OIF staff is working with IFC committee members and AASL to create and implement similar trainings for school librarians, starting with a preconference at the AASL convention in Charlotte this fall.

LeRoy C. Merritt Humanitarian Fund

The LeRoy C. Merritt Humanitarian Fund provides direct financial support to librarians facing difficulties due to their defense of intellectual freedom or as a result of discrimination. The trustees of the Merritt Fund, which is administered by OIF, are in the planning stages for the celebration of its 40th anniversary next year, focused on an event during the 2010 Annual Conference in Washington, D.C. The goal is to use the celebration to increase awareness of the Merritt Fund, which is still unknown to many librarians. A new standing committee of IFRT is dedicated to helping raise awareness of the Merritt Fund, which is supported almost entirely by donations from librarians.

For more information on the LeRoy C. Merritt Humanitarian Fund, or to donate, visit http://www.merrittfund.org.

ACTION

Intellectual Freedom Manual-Eighth Edition

The Office for Intellectual Freedom is working with ALA Editions toward publication of the eighth edition

of the *Intellectual Freedom Manual*. Publication for this book is tentatively planned to coincide with the 2010 Annual Conference. In preparation for each new edition, the Intellectual Freedom Committee reviews all ALA intellectual freedom policies.

During the 2008 Annual Conference, we proposed revisions to six interpretations and they were all adopted as amended. Since then, we have revised two other interpretations ("Challenged Materials" and "Restricted Access to Library Materials") and identified two additional concerns that would have been extremely difficult to incorporate into existing documents ("Minors and Internet Interactivity" and "Services to Persons with Disabilities"). Proposed revisions as well as the new interpretations were sent to the ALA Executive Board, Council, ALA chapter presidents, division presidents, ALA Council committee chairs, and round table chairs in December 2008, for commentary.

The IFC considered comments received both prior to and during the 2009 Midwinter Meeting. After thorough discussion of these policies, the Committee approved three interpretations as amended and is now submitting these documents for Council's adoption:

1. "Challenged Materials"; the IFC moves the adoption of its revisions to this policy, CD #19.1;
2. "Restricted Access to Library Materials"; the IFC moves the adoption of its revisions to this policy, CD #19.2; and
3. "Services to Persons with Disabilities"; the IFC moves the adoption of a new policy, CD #19.3.

In closing, the Intellectual Freedom Committee thanks the division and chapter intellectual freedom committees, the Intellectual Freedom Round Table, the unit liaisons, and the OIF staff for their commitment, assistance, and hard work.

Challenged Materials: An Interpretation of the Library Bill of Rights

Libraries: An American Value states, "We protect the rights of individuals to express their opinions about library resources and services." The American Library Association declares as a matter of firm principle that it is the responsibility of every library to have a clearly defined written policy for collection development that includes a procedure for review of challenged materials. Selection of online resources, including Web sites, should also be governed by this collection development policy and be subject to the same procedures for review of challenged materials. This policy reflects the *Library Bill of Rights* and is approved by the appropriate governing authority.

Challenged materials should remain in the collection during the review process. The *Library Bill of Rights* states in Article I that "Materials should not be excluded because of the origin, background, or views of those contributing to their creation," and in Article II, that "Materials should not be proscribed or removed because of partisan or doctrinal disapproval." Freedom of expression is protected by the Constitution of the United States, but constitutionally protected expression is often separated from unprotected expression only by a dim and uncertain line. The Supreme Court has held that the Constitution requires a procedure designed to examine critically all challenged expression before it can be suppressed. A hearing is a part of this procedure. Materials that meet the criteria for selection and inclusion within the collection should not be removed.

Therefore, any attempt, be it legal or extra-legal,* to regulate or suppress materials in libraries must be closely scrutinized to the end that protected expression is not abridged. Adopted June 25, 1971; amended July 1, 1981; amended January 10, 1990; amended January 28, 2009, by the ALA Council.

Restricted Access to Library Materials: An Interpretation of the Library Bill of Rights

Libraries are a traditional forum for the open exchange of information. Restricting access to library materials violates the basic tenets of the *Library Bill of Rights*.

Some libraries block access to certain materials by placing physical or virtual barriers between the user and those materials. For example, materials are sometimes placed in a "locked case," "adults only," "restricted shelf," or "high-demand" collection. Access to certain materials is sometimes restricted to protect them from theft or mutilation, or because of statutory authority or institutional mandate.

In some libraries, access is restricted based on computerized reading management programs that assign reading levels to books and/or users and limit choice to those materials on the program's reading list. Materials that are not on the reading management list have been removed from the collection in some school libraries. Organizing collections by reading management program level, ability, grade, or age level is another example of restricted access. Even though the chronological age or grade level of users is not representative of their information needs or total reading abilities, users may feel inhibited from selecting resources

* "Extra-legal" refers to actions that are not regulated or sanctioned by law. These can include attempts to remove or suppress materials by library staff and library board members that circumvent the library's collection development policy, or actions taken by elected officials or library board members outside the established legal process for making legislative or board decisions. "Legal process" includes challenges to library materials initiated and conducted pursuant to the library's collection development policy, actions taken by legislative bodies or library boards during official sessions or meetings, or litigation undertaken in courts of law with jurisdiction over the library and the library's governing body.

located in areas that do not correspond to their assigned characteristics.

Physical and virtual restrictions on access to library materials may generate psychological, service, or language skills barriers to access as well. Because restricted materials often deal with controversial, unusual, or sensitive subjects, having to ask a librarian or circulation clerk for access to them may be embarrassing or inhibiting for patrons desiring the materials. Even when a title is listed in the catalog with a reference to its restricted status, a barrier is placed between the patron and the publication. (See also "Labels and Rating Systems.") Because restricted materials often feature information that some people consider objectionable, potential library users may be predisposed to think of the materials as objectionable and, therefore, be reluctant to ask for access to them.

Although federal and state statutes require libraries that accept specific types of state and/or federal funding to install filters that limit access to Internet resources for minors and adults, filtering software applied to Internet stations in some libraries may prevent users from finding targeted categories of information, much of which is constitutionally protected. The use of Internet filters must be addressed through library policies and procedures to ensure that users receive information and that filters do not prevent users from exercising their First Amendment rights. Users have the right to unfiltered access to constitutionally protected information. (See also "Access to Electronic Information, Services, and Resources.")

Library policies that restrict access to materials for any reason must be carefully formulated and administered to ensure they do not violate established principles of intellectual freedom. This caution is reflected in ALA policies, such as "Evaluating Library Collections," "Free Access to Libraries for Minors," "Preservation Policy," and the ACRL "Code of Ethics for Special Collections Librarians."

Donated materials require special consideration. In keeping with the "Joint Statement on Access" of the American Library Association and Society of American Archivists, libraries should avoid accepting donor agreements or entering into contracts that impose permanent restrictions on special collections. As stated in the "Joint Statement on Access," it is the responsibility of a library with such collections "to make available original research materials in its possession on equal terms of access."

A primary goal of the library profession is to facilitate access to all points of view on current and historical issues. All proposals for restricted access should be carefully scrutinized to ensure that the purpose is not to suppress a viewpoint or to place a barrier between users and content. Libraries must maintain policies and procedures that serve the diverse needs of their users and protect the First Amendment right to receive information. Adopted February 2, 1973, by the ALA Council; amended July 1, 1981; July 3, 1991; July 12, 2000; June 30, 2004; and January 28, 2009 by the ALA Council.

Services to Persons with Disabilities: An Interpretation of the Library Bill of Rights

The American Library Association recognizes that persons with disabilities are a large and often neglected part of society. In addition to many personal challenges, some persons with disabilities face economic inequity, illiteracy, cultural isolation, and discrimination in education, employment, and the broad range of societal activities. The library plays a catalytic role in their lives by facilitating their full participation in society.

The First Amendment to the U.S. Constitution mandates the right of all persons to free expression and the corollary right to receive the constitutionally protected expression of others. A person's right to use the library should not be denied or abridged because of disabilities. The library has the responsibility to provide materials "for the interest, information, and enlightenment of all people of the community the library serves." (See also the *Library Bill of Rights*.) When information in libraries is not presented in formats that are accessible to all users, discriminatory barriers are created.

Library staff should be proactive in reaching out to persons with disabilities and facilitating provision of resources and services. Library staff also should be aware of the available technologies and how to assist all users with library technology. All library resources should be available in formats accessible by persons of all ages with different abilities. These materials must not be restricted by any presuppositions about information needs, interests, or capacity for understanding. The library should offer different, necessary modes of access to the same content using equipment, electronics, or software. All information resources provided directly or indirectly by the library, regardless of technology, format, or method of delivery, should be readily, equally and equitably accessible to all library users. Libraries should make every effort to support the needs of their users with disabilities and when necessary, should seek financial or other assistance to do so.

ALA recognizes that providing specialized services often requires retention of extensive patron records, such as a user's transaction histories. Libraries assume responsibility for protecting the confidentiality of all personally identifiable information entrusted to them to perform services.

Libraries should provide training opportunities for all staff and volunteers in order to sensitize them to issues affecting persons with disabilities and to teach effective techniques for providing services for users with disabilities and for working with colleagues with disabilities.

Libraries should use strategies based upon the principles of universal design to ensure that library facilities, policies, services, and resources meet the needs of all users. Libraries should provide a clear path for persons with disabilities to request accommodations that will enable them to participate fully in library programs and services. Further, libraries and schools should work with persons with disabilities, agencies, organizations, and vendors to integrate assistive tech-

nology into their facilities and services to meet the needs of persons with a broad range of disabilities, including learning, mobility, sensory, and developmental disabilities.

The preamble to the *Library Bill of Rights* states, "all libraries are forums for information and ideas." By removing the physical, technological, and procedural barriers to accessing those forums, libraries promote the full inclusion of persons with disabilities into our society. (ALA related policy: 54.3.2 Library Services for People with Disabilities.) Approved by the ALA Council, January 28, 2009. □

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before the Eleventh Circuit Court of Appeals.

The second lawsuit is *Sarah Bradburn et al.* v. *North Central Regional Library District*. The lawsuit, filed by library users and the ACLU, challenges a library's policy of refusing to honor adults' requests to temporarily disable Internet filters for research and reading. The lawsuit is presently pending before the Washington State Supreme Court, which is considering several questions of state law certified to that court by the federal district court. Once the Washington State Supreme Court concludes its deliberations, the case will return to the federal courts. FTRF is not a participant in this lawsuit.

IDENTIFYING ISSUES, PLANNING FOR THE FUTURE

At this meeting, FTRF's Developing Issues Committee identified several intellectual freedom issues that warrant further study to give the library community the opportunity to develop strategies to address those issues before they become the subject of litigation. These include:

- Collection development in the 21st Century: how the Internet has influenced collection development and censorship issues, including issues of authentication, access, and ownership;
- Overzealous government regulation that negatively affects access to information, privacy, and freedom of expression;
- Extensive government warrantless searches of laptops, cell phones, and other electronic devices, particularly at the border;
- Internet filtering and censorship in foreign countries, and how U.S.-based corporations, Internet service providers, and database providers facilitate this censorship;
- Ownership and control of electronic information resources that negatively affect readers' ability to access information in databases, or which allows articles and information to be removed from databases and electronic resources; and
- Minors' Internet use in academic libraries.

The Board agreed to develop "white papers" that explore these issues with the assistance of Board volunteers and the Foundation's general counsel, Theresa Chmara.

EXECUTIVE DIRECTOR JUDITH KRUG RECEIVES BRENNAN AWARD

On January 13, the Thomas Jefferson Center for the Protection of Free Expression announced that FTRF's executive director, Judith F. Krug, will receive the fifth William J. Brennan, Jr. Award. The award recognizes a person or group who has demonstrated a commitment to the principles of free expression consistent with the late U.S. Supreme Court Justice's abiding devotion to the First Amendment. Dr. Krug will receive her award during the Foundation's 40th Anniversary Gala this July.

40TH ANNIVERSARY GALA CELEBRATION

2009 marks FTRF's 40th year of service as the First Amendment legal defense arm of the American Library Association. We are celebrating this important milestone with a gala that will be held in the new Modern Wing of the Art Institute of Chicago on Sunday, July 12, 2009.

The event will honor the Foundation's visionary founder and executive director, Judith Krug. It also will honor and recognize the educational work of Chicago's McCormick Freedom Museum. Award-winning author Scott Turow will be the featured speaker at the event, which will include dinner and access to the galleries in the Renzo Piano-designed museum space. The event will feature a special address by legendary author Judy Blume.

Planning for the 40th Anniversary Gala is being carried out by a hard-working and creative committee under the co-chairmanship of FTRF trustees Robert P. Doyle and Burton Joseph, both of Chicago. Tickets are $125 and are on sale by calling (800) 545-2433, ext. 4226. Tickets also can be purchased via ALA's annual conference registration website. Information on sponsorship opportunities and more event details can be found at www.ftrf.org/ftrfgala.

CONABLE SCHOLARSHIP

FTRF will be seeking candidates for the Conable Scholarship, which honors the memory of Gordon Conable, a past president of the Freedom to Read Foundation, an ALA Councilor, and a tireless champion of intellectual freedom. The Conable Scholarship provides financial assistance to a new librarian or library student who shows a particular interest in intellectual freedom and wishes to attend the

ALA Annual Conference. Mentoring was an important undertaking for Gordon, and the board is pleased to be able to continue to honor his memory in this way.

Stay tuned for the press release next month, and please share this information with new librarians and library students and encourage them to apply.

LAUREN MYRACLE AT AUTHOR EVENT

On Sunday, January 25, at the Tattered Cover Book Store, FTRF hosted its fourth annual author event. The star of the night was Lauren Myracle, a frequently challenged author of young-adult books including *ttyl*, *ttfn*, *l8r g8r*, *Bliss*, and *Rhymes with Witches*. I'm pleased to report that we had a full house and raised thousands of dollars for the Foundation. Thanks to Lauren and to our cosponsors at the Denver Public Library and particularly the Tattered Cover, whose owner Joyce

Meskis is a veteran of major First Amendment battles and one of our true free speech heroes.

FTRF MEMBERSHIP

The Freedom to Read Foundation's members make it possible for FTRF to defend First Amendment freedoms and advocate on behalf of librarians and library users facing intellectual freedom challenges. Membership is a great value—so much is accomplished for a relatively small investment. I strongly encourage all ALA Councilors to join me in becoming a personal member of the Freedom to Read Foundation, and to have your libraries become organizational members. Please send a check ($35 for personal members, $100 for organizations) to:

Freedom to Read Foundation
50 E. Huron Street
Chicago, IL 60611

Alternatively, you can join or renew your membership by calling (800) 545-2433, ext. 4226, or online at www.ftrf.org/joinftrf.html. □

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one library's experience. . . from page 34)

In both instances, Hartman responded with a letter laying out the library's policies. The 14 criteria for maintaining a book in the collection include significance of subject matter, popular demand, critical acclaim, and the heft of artists involved. "In terms of artistic merit, the film has received overwhelmingly positive reviews from a range of mainstream critical sources," Hartman wrote in response to the "Brokeback Mountain" concern. He further wrote that the movie had been checked out 1,300 times.

But there are other concerns about materials. In 2000, one patron attempted to have tossed from the library's collection *Robbie and the Leap Year Blues*, a book about a boy dealing with his parents' divorce. Why? Because, in addition to sexual content, it promoted parental disrespect. "It has no literary value whatsoever," the person wrote.

The "Expression of Concern" forms used to include questions about whether the objector understood the theme

of the book or movie. The forms are shorter now, but the response letters nonetheless can sometimes sound like lessons on the subtlety of irony.

When one patron objected to *Mad* magazine (it has been the subject of scorn for two of the 13 ban requests), Hartman wrote that the periodical was known for its "satirical take on pop culture. The humor of *Mad* ignores notions of sacred cows, political correctness, and high-mindedness, and it is built on parody, silliness and innuendo," he wrote.

Other concerns dealt less with objections of morals and more about objections of quality.

One library patron asked that the library remove *Fulfilling Dreams*, a romantic novel, because as Hartman remembers, the concerned person thought "it was bad writing."

The Expression of Concern forms are just the first step in the process. Members of the collections staff often write back, as Hartman does, and if the patrons aren't satisfied, they can take their concerns to the board of trustees. Borchers—who is asking only that the four materials be restricted, not removed—is the sole person since 2000 to do that.

Library spokeswoman Diana Friend said some materials may seem inappropriate for children, which is why they are in a different section. Librarians have a philosophical reflex to protect patrons' right to stroll the aisles and look at materials for themselves, she said.

"Putting material behind the counter is a form of censorship," she said.

Borchers contends there is no law protecting people from being embarrassed by having to ask for a book, such as *The Joy of Gay Sex*. "If you're embarrassed, maybe you shouldn't be reading it," she said. Reported in: *Topeka Capital-Journal*, January 25. □

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Attorneys general like Blumenthal and Roy Cooper of North Carolina publicly accused the social networks of facilitating the activities of pedophiles and pushed them to adopt measures to protect their youngest users. Citing studies that showed tens of thousands of convicted sex offenders were using MySpace, they pressured the networks to purge those people from their membership databases.

The attorneys general also charged the task force with evaluating technologies that might play a role in enhancing safety for children online. An advisory board composed of academic computer scientists and forensics experts was created within the task force to look at technologies and ask companies in the industry to submit their child-protection systems.

Among the systems the technology board looked at included age verification technologies that try to authenticate the identities and ages of children and prevent adults from contacting them. But the board concluded that such systems "do not appear to offer substantial help in protecting minors from sexual solicitation."

One problem is that it is difficult to verify the ages and identities of children because they do not have driver's licenses or insurance.

"The image presented by the media of an older male deceiving and preying on a young child does not paint an accurate picture of the nature of the majority of sexual solicitations and Internet-initiated offline encounters," the report stated. "Of particular concern are the sexual solicitations between minors and the frequency with which online-initiated sexual contact resembles statutory rape rather than other models of abuse."

The task force was created in accordance with the Joint Statement on Key Principles of Social Networking Safety announced in January 2008 by the Attorneys General Multi-State Working Group on Social Networking and MySpace.

In addition to the report, which provides a series of recommendations for creating a safer environment on the Internet, the task force produced a literature review of relevant research in the field of youth online safety in the United States, and a report from its Technology Advisory Board, reviewing the 40 technologies submitted to the task force.

Professor John Palfrey, chairman of the task force and co-director of the Berkman Center, discussed the task force's findings January 14 at a Congressional Internet Caucus Fifth Annual State of the Net Conference in Washington, D.C. Reported in: *New York Times*, January 14; Berkman Center press release, January 14. □

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they are a minority and would probably be little more than a nuisance politically," said Aftergood, director of the federation's Project on Government Secrecy.

Committee members thoroughly studied the president's legal authority to impose such changes without Congressional approval and became convinced that he could, said panel member Deanne C. Siemer, a managing director at Wilsie LLC, a Washington law firm.

The chairman of the U.S. House of Representatives Science and Technology Committee, Rep. Bart Gordon (D-TN) offered no objection to the president's taking action unilaterally. In a written statement, Representative Gordon

endorsed the Academies' committee's concerns about current regulations as harmful to American technological innovation and called the report "a serious attempt to better understand the nature of the problem and to offer recommendations for reform."

Problems might prevent the panel's ideas from working in the real world, Aftergood said. Researchers might want to give government bureaucrats more discretion about exporting materials, equipment, and information, but that might be difficult to establish in practice, he said.

"At some point," "ftergood said, "officials in customs and law enforcement need actual lists, not conceptual analyses."

Researchers also might not benefit from the adoption of another of the report's proposals, the creation of an appeals panel composed of federal judges to adjudicate export-control disputes, Aftergood said. "Instead of reasoned deliberation, they almost always defer to the government's opposition to disclosure," he said.

The National Academies panel was led by Scowcroft and John L. Hennessy, president of Stanford University. Its academic members also included Claude R. Canizares, vice president for research at the Massachusetts Institute of Technology; France A. Córdova, president of Purdue University; Elizabeth Rindskopf Parker, dean of law at the University of the Pacific; and Mitchel B. Wallerstein, dean of social science at Syracuse University. Reported in: *Chronicle of Higher Education* online, January 9. ☐

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Amsterdam, Netherlands

A Dutch court has ordered prosecutors to put a right-wing politician on trial for making anti-Islamic statements.

Freedom Party leader Geert Wilders made a controversial film last year equating Islam with violence and has likened the *Koran* to Adolf Hitler's *Mein Kampf*.

"In a democratic system, hate speech is considered so serious that it is in the general interest to . . . draw a clear line," the court in Amsterdam said. Wilders said the judgement was an "attack on the freedom of expression."

"Particpation in the public debate has become a dangerous activity. If you give your opinion, you risk being prosecuted," he said. Not only he, but all Dutch citizens opposed to the "Islamisation" of their country would be on trial, Wilders warned. "Who will stand up for our culture if I am silenced?"

The three judges said that they had weighed Wilders's "one-sided generalisations" against his right to free speech, and ruled that he had gone beyond the normal leeway granted to politicians.

"The Amsterdam appeals court has ordered the prosecution of member of parliament Geert Wilders for inciting hatred and discrimination, based on comments by him in various media on Muslims and their beliefs," the court said in a statement. "The court also considers appropriate criminal prosecution for insulting Muslim worshippers because of comparisons between Islam and Nazism made by Wilders."

The court's ruling reversed a decision last year by the public prosecutor's office, which said Wilders's comments had been made outside parliament as a contribution to the debate on Islam in Dutch society and that no criminal offense had been committed. Prosecutors said that they could not appeal against the judgement and would open an investigation immediately.

Gerard Spong, a prominent lawyer who pushed for Wilders's prosecution, welcomed the court's decision. "This is a happy day for all followers of Islam who do not want to be tossed on the garbage dump of Nazism," he told reporters.

In March 2008, Wilders posted a film about the Koran on the internet, prompting angry protests across the Muslim World. The opening scenes of *Fitna*—a Koranic term sometimes translated as "strife"—show a copy of the holy book followed by footage of the bomb attacks on the United States on September 11, 2001, London in July 2005, and Madrid in March 2004.

Pictures appearing to show Muslim demonstrators holding up placards saying "God bless Hitler" and "Freedom go to hell" were also featured. The film ends with the statement: "Stop Islamisation. Defend our freedom."

Dutch Prime Minister Jan Peter Balkenende said at the time that the film wrongly equated Islam with violence and served "no purpose other than to offend."

A year earlier, Wilders described the Koran as a "fascist book" and called for it to be banned in "the same way we ban *Mein Kampf*," in a letter published in the *De Volkskrant* newspaper.

Wilders has had police protection since Dutch director Theo Van Gogh was killed by a radical Islamist in 2004. His Freedom Party (PVV), which has nine MPs in the lower house of parliament, has built its popularity largely by tapping into the fear and resentment of Muslim immigrants. Reported in: BBC News, January 21. ☐

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is it legal?. . . from page 54)

arrest and charge the teenagers only in January. According to the police, the two girls are being charged with manufacturing, disseminating, or possessing child pornography, while the two boys are being charged with possession of child porn. Reported in: arstechnica.com, January 14. ☐

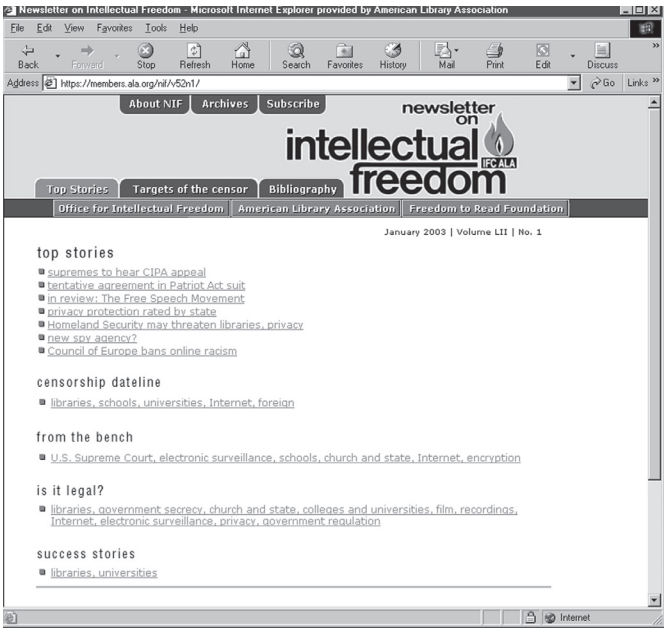
log on to

newsletter on intellectual freedom *online*

The Newsletter on Intellectual Freedom (NIF)—the only journal that reports attempts to remove materials from school and library shelves across the country—is *the* source for the latest information on intellectual freedom issues. *NIF* is **now available** both **online** and in **print!**

To celebrate the launch of the online version, for this first year only, a $50 subscription will entitle new and renewing subscribers to **both** the online and print editions.

The online version is available at www.ala.org/nif/. The *NIF* home page contains information on accessing the *Newsletter*, and links to technical support, an online subscription form, and the Office for Intellectual Freedom.



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Current institutional and personal subscribers were sent a letter explaining how to access the online version. If you did not receive a letter, or if you would like more information on how to subscribe to either the print or online version, please contact Nanette Perez at 1-800-545-2433, ext. 4223, or nperez@ala.org.

intellectual freedom bibliography

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

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