newsletter on intellectual freedom

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Tango tops "most challenged" list for second year

For a second consecutive year, Justin Richardson and Peter Parnell's award-winning *And Tango Makes Three*, a children's book about two male penguins caring for an orphaned egg, tops the list of the American Library Association's (ALA) 10 Most Challenged Books of 2007.

Three books are new to the list: *Olive's Ocean*, by Kevin Henkes; *The Golden Compass*, by Philip Pullman; and *TTYL*, by Lauren Myracle.

"Free access to information is a core American value that should be protected," said Judith F. Krug, director of the ALA Office for Intellectual Freedom (OIF). "Not every book is right for each reader, but an individual's interpretation of a book should not take away my right to select reading materials for my family or myself."

For more than forty years, the OIF has received reports on book challenges. A challenge is defined as a formal, written complaint, filed with a library or school, requesting that materials be removed because of content or appropriateness. In 2007, the OIF received 420 reports of efforts to abolish materials from school curriculum and library bookshelves. Public libraries, schools, and school libraries report challenges to OIF, but a majority of challenges go unreported.

The "10 Most Challenged Books of 2007" reflect a range of themes, and consist of the following titles:

1. *And Tango Makes Three*, by Justin Richardson/Peter Parnell. Reasons: Anti-Ethnic, Sexism, Homosexuality, Anti-Family, Religious Viewpoint, Unsuited to Age Group.
2. *The Chocolate War*, by Robert Cormier. Reasons: Sexually Explicit, Offensive Language, Violence.
3. *Olive's Ocean*, by Kevin Henkes. Reasons: Sexually Explicit, Offensive Language.
4. *The Golden Compass*, by Philip Pullman. Reasons: Religious Viewpoint.
5. *The Adventures of Huckleberry Finn*, by Mark Twain. Reasons: Racism.
6. *The Color Purple*, by Alice Walker. Reasons: Homosexuality, Sexually Explicit, Offensive Language.
7. *TTYL*, by Lauren Myracle. Reasons: Sexually Explicit, Offensive Language, Unsuited to Age Group.

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domestic spying outpaces terrorism prosecutions

The number of Americans being secretly wiretapped or having their financial and other records reviewed by the government has continued to increase as officials aggressively use powers approved after the September 11 attacks. But the number of terrorism prosecutions ending up in court—one measure of the effectiveness of such sleuthing—has continued to decline, in some cases precipitously.

The trends, visible in new government data and a private analysis of Justice Department records, are worrisome to civil liberties groups and some legal scholars. They say it is further evidence that the government has compromised the privacy rights of ordinary citizens without much to show for it.

The emphasis on spy programs also is starting to give pause to some members of Congress who fear the government is investing too much in anti-terrorism programs at the expense of traditional crime-fighting. Other lawmakers are raising questions about how well the FBI is performing its counter-terrorism mission.

The Senate Intelligence Committee in May concluded that the bureau was far behind in making internal changes to keep the nation safe from terrorist threats. Lawmakers urged that the FBI set specific benchmarks to measure its progress and make more regular reports to Congress.

These concerns come as the Bush administration has been seeking to expand its ability to gather intelligence without prior court approval. It has asked Congress for amendments to the 1978 Foreign Intelligence Surveillance Act (FISA) to make it clear that eavesdropping on foreign telecommunications signals routed through the U.S. does not require a warrant.

Law enforcement officials say the additional surveillance powers have been critically important in ways the public does not always see. Threats can be mitigated, they say, by deporting suspicious people or letting them know that authorities are watching them.

"The fact that the prosecutions are down doesn't mean that the utility of these investigations is down. It suggests that these investigations may be leading to other forms of prevention and protection," said Thomas Newcomb, a former Bush White House national security aide. He said there were half a dozen actions outside of the criminal courts that the government could take to snuff out potential threats, including using diplomatic or military channels.

Although legal experts say they would not necessarily expect the number of prosecutions to rise along with the stepped-up surveillance, there are few other good ways to measure how well the government is progressing in keeping the country safe.

"How does one measure the success? The short answer is we aren't in a great position to know," said Daniel Richman, a former federal prosecutor. With prosecutions declining, he said, the public is left with imperfect and possibly misleading ways to gauge progress in the Bush administration's war on terrorism—such as the number of secret warrants the government issues or the number of agents it assigns to terrorism cases.

"These are the only tracks in the snow left by terrorism investigations, if there are no more counter-terrorism prosecutions," Richman said. "This is why, more than ever, there is a pressing need for congressional oversight, for accountability at the top of the [Justice] department, and for public confidence in the department."

A recent study showed that the number of terrorism and national security cases initiated by the Justice Department in 2007 was more than 50% below 2002 levels. The nonprofit Transactional Records Access Clearinghouse at Syracuse University, which obtained the data under the Freedom of Information Act, found that the number of cases brought declined 19% in the last year alone, dropping to 505 in 2007 from 624 in 2006.

By contrast, the Justice Department reported in April that the nation's spy court had granted 2,370 warrant requests by the department to search or eavesdrop on suspected terrorists and spies in the U.S. last year—9% more than in 2006. The number of such warrants approved by the Foreign Intelligence Surveillance Court has more than doubled since the 2001 terrorist attacks.

The department also reported a sharp rise in the use of national security letters by the FBI—from 9,254 in 2005 to 12,583 in 2006, the latest data available. The letters seek customer information from banks, Internet providers, and phone companies. They have caused a stir because consumers do not have a right to know that their information is being disclosed and the letters are issued without court oversight.

The inspector general of the Justice Department has found numerous cases in which FBI agents failed to comply with rules and guidelines in issuing the letters, often gaining access to information they were not entitled to. The FBI has responded by taking a number of measures to tighten its internal procedures.

Civil liberties groups say the new data reveal a disturbing consequence of the government's post–September 11 expanded surveillance capabilities.

"The number of Americans being investigated dwarfs any legitimate number of actual terrorism prosecutions, and that is extremely troubling—for both the security and privacy of innocent Americans as well as for the squandering of resources on people who have not and never will be charged with any wrongdoing," said Lisa Graves, deputy director of the Center for National Security Studies, a Washington-based civil liberties group.

But Dean Boyd, a Justice Department spokesman, said

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senate report on terrorism and the Internet generates criticism

On May 8, staff for Homeland Security and Governmental Affairs Committee (HSGAC) Chair Joe Lieberman (I-CT) and Ranking Member Susan Collins (R-ME) published a report on homegrown terrorism and the Internet that has raised free speech and guilt-by-association concerns. A coalition of nonprofits and a group of Muslim organizations both sent letters objecting to the assumptions in the report. In addition, YouTube parent company Google rejected a request from Lieberman to remove all content posted by terrorist organizations, saying videos with legal, nonviolent, and non-hate speech content would remain online.

The report, "Violent Islamist Extremism, The Internet, and the Homegrown Terrorist Threat," came after six Senate hearings on the subject and is the first in a series planned by committee staff. It focuses on "how violent Islamist terrorist groups like al-Qaeda are using the Internet to enlist followers into the global violent Islamist terrorist movement . . ." While the report frequently refers to "domestic radicalization" and "violent Islamist ideology," it never defines these terms. It cites the attacks on public transit systems in London and Madrid and three examples of terrorist plot arrests in the United States as evidence of a "growing trend that has raised concerns within the U.S. intelligence and law enforcement communities."

It goes on to note that unlike Europe, the U.S. history of absorbing immigrants has provided a layer of protection against "homegrown terrorism," but "the terrorists' Internet campaign bypasses America's physical borders and undermines cultural barriers that previously served as a bulwark against al-Qaeda's message . . ." It then provides examples of "highly sophisticated operations that utilize cutting-edge technology," including websites, chat rooms, online magazines, songs, news updates, and more.

The report's exclusive focus on the Internet and on American Muslims generated an immediate response from the American Civil Liberties Union (ACLU). Senior Legislative Counsel Timothy Sparapani said, "Focusing on people with specific religious beliefs or backgrounds will not protect against the Timothy McVeigh's of the world. This narrow focus could cost us dearly in the future." On May 14, a coalition of Muslim organizations sent Lieberman and Collins a joint letter noting the committee's failure to get input from American Muslims at its hearings and expressing concern that the report encourages "suspicion of several million Americans on the basis of faith." The letter was signed by the American Arab Anti-Discrimination Committee, the Council on American-Islamic Relations, Muslim Advocates, and the Muslim Public Affairs Council.

Prior to release of the report, a broad-based coalition of nonprofits sent the committee recommendations that urged caution, saying, "It is critically important the articulation of the problem does not cause people merely exercising their First Amendment rights to fear being swept into the net of suspicion." It also pointed to the long-established principle, based on the 1969 U.S. Supreme Court ruling in *Brandenburg* v. *Ohio*, that "speech can only be curtailed when it is intended to and has the effect of causing imminent lawless conduct. Mere abstract advocacy of violence, however objectionable, may not be barred."

The coalition of nonprofits noted that the Internet has "become an essential communications and research tool for everyone. Our concern is that this focus on the Internet could be a precursor to proposals to censor and regulate speech on the Internet. Indeed, some policy makers have advocated shutting down objectionable websites." However, the committee report acknowledged that content is "mirrored" on many sites, so that "propaganda remains accessible even if one or more of the sites are not available."

The nonprofit coalition that had earlier expressed its concerns to committee staff also criticized the report's heavy reliance on a 2007 New York City Police Department (NYPD) model of the radicalization process. The NYPD report describes a four-stage "path to radicalization" consisting of pre-radicalization, self-identification, indoctrination, and jihadization. The report applied this template to its analysis of Internet communications by terrorist organizations. The problem, according to the nonprofit coalition, is that the model "fails to note that millions of people may progress through these 'stages' and never commit an act of violence."

The letter from the Muslim organizations also noted that the NYPD model had "prompted criticism for examining a statistically insignificant, unrepresentative sample set, as well as for drawing conclusions based on logical fallacies. In fact, federal counterterrorism officials have privately repudiated the NYPD report."

Fears of attempts to censor content on the Internet were quickly realized on May 19 when Lieberman sent a letter to Google asking them to "immediately remove all content produced by Islamist terrorist organizations from YouTube." Lieberman's letter cited the staff report and noted, "Searches on YouTube return dozens of videos branded with an icon or logo identifying the videos as the work of one of these Islamist terrorist organizations." As a result, Lieberman says YouTube "unwittingly" permits these groups to use the Web "to disseminate their propaganda, enlist followers, and provide weapons training." The letter says YouTube's Community Guidelines are not adequately enforced.

Google posted a response on its Public Policy Blog, which said "hundreds of thousands of videos are uploaded to YouTube every day. Because it is not possible to prescreen this much content, we have developed an innovative and reliable community policing system that involves our

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police and former Secret Service agents fan black ops on green groups

A private security company organized and managed by former Secret Service officers spied on Greenpeace and other environmental organizations from the late 1990s through at least 2000, pilfering documents from trash bins, attempting to plant undercover operatives within groups, casing offices, collecting phone records of activists, and penetrating confidential meetings.

According to company documents provided to the magazine *Mother Jones* by a former investor in the firm, this security outfit collected confidential internal records donor lists, detailed financial statements, the Social Security numbers of staff members, strategy memos from these organizations and produced intelligence reports for public relations firms and major corporations involved in environmental controversies.

In addition to focusing on environmentalists, the firm, Beckett Brown International (later called S2i), provided a range of services to a host of clients. According to its billing records, BBI engaged in "intelligence collection" for Allied Waste; it conducted background checks and performed due diligence for the Carlyle Group, the Washington-based investment firm; it provided "protective services" for the National Rifle Association; it handled "crisis management" for the Gallo wine company and for Pirelli; it made sure that the Louis Dreyfus Group, the commodities firm, was not being bugged; it engaged in "information collection" for Wal-Mart; it conducted background checks for Patricia Duff, a Democratic Party fundraiser then involved in a divorce with billionaire Ronald Perelman; and for Mary Kay, BBI mounted "surveillance," and vetted Gayle Gaston, a top executive at the cosmetics company (and mother of actress Robin Wright Penn), retaining an expert to conduct a psychological assessment of her. Also listed as clients in BBI records: Halliburton and Monsanto.

BBI, which was headquartered in Easton, Maryland, worked extensively, according to billing records, for public-relations companies, including Ketchum, Nichols-Dezenhall Communications, and Mongoven, Biscoe and Duchin. At the time, these PR outfits were servicing corporate clients fighting environmental organizations opposed to their products or actions.

Ketchum, for example, was working for Dow Chemical and Kraft Foods; Nichols-Dezenhall, according to BBI records, was working with Condea Vista, a chemical manufacturing firm that in 1994 leaked up to 47 million pounds of ethylene dichloride, a suspected carcinogen, into the Calcasieu River in Louisiana. Like other firms specializing in snooping, Beckett Brown turned to garbage swiping as a key tactic. BBI officials and contractors routinely conducted what the firm referred to as "D-line" operations, in which its operatives would seek access to the trash of a target, with the hope of finding useful documents. One midnight raid targeted Greenpeace. One BBI document lists the addresses of several other environmental groups as "possible sites" for operations: the National Environmental Trust, the Center for Food Safety, Environmental Media Services, the Environmental Working Group, the U.S. Public Interest Research Group, and the Center for Health, Environment and Justice, an organization run by Lois Gibbs, famous for exposing the toxic dangers of New York's Love Canal. For its rubbish-rifling operations, BBI employed a police officer in the District of Columbia and a former member of the Maryland state police.

Beckett Brown's efforts to penetrate environmental groups and other targets came to an end when the business essentially dissolved in 2001 amid infighting between the principals. But the firm's officials went on to work in other security firms that remain active today.

Beckett Brown International began when John C. Dodd, III, met Richard Beckett at a bar in Easton in 1994. Dodd had recently become a millionaire after his father had sold an Anheuser-Busch beer distributorship on Maryland's eastern shore. Beckett ran a local executive recruiting and consulting business. Soon after they met, according to Dodd, Beckett introduced him to Paul Rakowski, a recently retired Secret Service agent, who had put in two decades protecting presidents and foreign heads of state and had become regional manager of the agency's financial crimes division. Rakowski told Dodd he had an idea for a new security business.

But Dodd was reluctant to put in the start-up money for the enterprise, because he didn't know who all the partners were. To impress him, Dodd says, Rakowski and his former Secret Service colleagues began taking him and his friends on special tours of the White House. "This wasn't a White House tour conducted by tour guides," he says. "They would take us . . . to areas that said 'Do not pass this line.'"

Eventually Dodd agreed to be the sole investor of the new firm, and he put up $170,000, the first of what would be several loans at 15 percent interest. (His investment in the firm, Dodd estimates, would grow to a total of $700,000.) The company was officially launched in August 1995, named after Beckett and Sam Brown, a lawyer who helped get it started. Rakowski, Masonis, and Ferris were officials in the firm.

The firm retained Vincent Cannistraro, a former chief of the CIA's Counterterrorism Center, and earlier one of the government officials responsible for overseeing U.S. support of the Nicaraguan contras, as a consultant at $75,000 a year. "I did due diligence on a couple of customers," Cannistraro recalls. On the advice of Cannistraro and Bresett, BBI turned down a $1 million job with the Church of Scientology, according to Dodd.

In 2000, the firm, which had changed its name to S2i after Richard Beckett left the company, was targeting a

group of activist organizations opposed to genetically engineered food that had formed a coalition called GE Food Alert. In the fall of 2000, with these groups poised to assail Taco Bell, S2i operatives got on the case. Their thoughts soon turned to garbage.

On September 26, Jay Bly, a former Secret Service agent working for S2i, sent an e-mail to Tim Ward, the former Maryland state trooper on the payroll: "Received a call from Ketchum yesterday afternoon re three sites in DC. It seems Taco Bell turned out some product made from bioengineered corn. The chemicals used on the corn have not been approved for human consumption. Hence Taco Bell produced potential glow-in-the-dark tacos. Taco Bell is owned by Kraft. The Ketchum Office, New York, has the ball. They suspect the initiative is being generated from one of three places:

1. Center for Food Safety, 7th & Penn SE
2. Friends of the Earth, 1025 Vermont Ave (Between K & L Streets)
3. GE Food Alert, 1200 18th St NW (18th & M)

#1 is located on 3rd floor. Main entrance is key card. Alley is locked by iron gates. 7 dempsters [sic] in alley-take your pick. #2 is in the same building as Chile Embassy. Armed guard in lobby & cameras everywhere. There is a dumpster in the alley behind the building. Don't know if it is tied to bldg. or a neighborhood property. Cameras everywhere. #3 is doable but behind locked iron gates at rear of bldg."

In this e-mail, Bly explained the urgency and the goal: "Apparently there is an article or press release due out next week and [Ketchum] would like some pre release information." He then turned practical: "I want to send Sarah [another BBI employee] to site #1 for a job inquiry. She can see how big the offices are and get the lay of the land. Maybe this will narrow the field. If they have a job opening could she work there for two or three days to find out what's going on?" The Friends of the Earth site, he noted, would be

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First Amendment litigator named a "Library Champion"

The New Jersey Library Association recently honored First Amendment litigator Grayson Barber with one of its 2008 Library Champion awards.

Leslie Burger, director of the Princeton Public Library nominated the Princeton Township resident for the award, calling Ms. Barber "a passionate supporter of intellectual freedom and First Amendment rights" in a letter to the New Jersey Library Association's Honors and Awards Committee.

"Grayson gives freely of her time and expertise to provide advice to libraries throughout the state and region on matters relating to intellectual freedom and privacy," Burger said in the letter. "She serves as a member of the NJLA's Intellectual Freedom Subcommittee and has been instrumental in advising the Association and the state's libraries with regard to the library confidentiality law, national security letters, internet filtering, the legal requirements associated with subpoenas, unattended children in libraries, the PATRIOT Act, meeting room policies and all other matters that arise in connection with our customer's rights to privacy and intellectual freedom."

Barber's participation as a presenter in several programs highlighting these issues as well as the fact that she does all of her work for libraries without pay was also cited.

Having gone to law school to become a privacy advocate, the USA PATRIOT Act's signing after September 11 prompted Barber to begin legally advising library staff and board members, Burger said. The law expands the authority of federal agencies to fight the threat of terrorism by searching telephone and e-mail communications as well as medical, financial and other records.

"In America, there's a real concern that people should be able to read books or view websites without being persecuted or prosecuted or without becoming under suspicion for what you're reading," Barber said. "A few years after September 11, Congress passed the PATRIOT Act and I became very concerned that the FBI would start surveillance in libraries."

Barber, an independent attorney, said one way she's helped protect privacy in libraries has been through raising awareness of New Jersey's library confidentiality law. She has explained to librarians that under the law, library records containing names or other personally identifying details regarding the users of libraries cannot be disclosed to anyone other than the user without a subpoena issued by a court or court order or unless the records are necessary for the proper operation of the library. She has also assisted in situations where police refused to listen to librarians versed on the library confidentiality law.

"I have stepped in quite a few times when there have been investigations," Barber said. "At a couple of libraries in New Jersey, the police came into the library and said they wanted to search computers for a criminal investigation and the librarian said you can't search the computers without a subpoena. The police took the computers away and I had to negotiate with the police to get them back."

The Princeton Public Library recently benefited from having Barber serve on its board of trustees. Burger said during this time period, Barber reminded both her and the library's board of trustees of their responsibilities to protect the rights of the library's patrons regarding their privacy and ability to use the library. Reported in: *Princeton Packet*, June 3. □

censorship dateline

libraries

Sacramento, California

Pornography can still be seen on computers at Sacramento Public Libraries—for now. The possibility of banning sexually explicit material on library computers was discussed April 24 by board members of the Sacramento Public Library board. However, the board was deadlocked in a 7–7 split vote and no decision was made.

Concerned parents made their voices heard at Thursday's meeting. "How dare you not want to protect our children," Brenda Bennett said. Robin Littau added, "I will never let my kids be alone in a library." Some parents said the material should be blocked so children can't get to it; others said that's a violation of free speech.

The first issue being considered involves Internet filters. Adults can turn off the filters, but teenagers and children cannot. The filters sometimes block sites that have information about medications. The second issue is a "shoulder-tap" policy that would allow library staff to ask people to stop looking at a webpage that might be offensive to others.

The policy is censorship, the ACLU said, and it needs to be changed. "It's a bad thing. Under our First Amendment and under our constitutional system, the government should not be telling us what to read or what to look at any more than the government should be telling us what to think," the ACLU's Michael Risher said.

Board members said that after seven years of debate they won't address the pornography issue again anytime soon. Reported in: kcra.com, April 24.

San Jose, California

The San Jose City Council will reconsider its policy against Internet filters on library computers, a council committee decided May 14, despite a new report asserting the technology impedes research while still letting raunchy pornography sail through.

The Rules and Open Government Committee unanimously scheduled a council vote for the evening of June 17. But San Jose State University, which jointly runs the city's main library, objected to the idea and the city attorney cited potential free-speech concerns.

Councilman Pete Constant in October asked the council to reconsider its current policy, adopted in 1997, which allows unfiltered Web access at all city libraries. He said the policy has made libraries a magnet for men viewing porn and exposing themselves in public, resulting in more than a dozen arrests at the Dr. Martin Luther King, Jr., main library.

Constant also said filtering technology has improved over the past decade. It is now used by about half of public library systems nationwide, including San Francisco, Sacramento and the counties of Santa Clara, Alameda, and Los Angeles. The San Jose-based Values Advocacy Council also has urged Internet filtering.

But San Jose Library Director Jane Light, while saying she did not object to a review of the current policy, said in a new report that the technology would be costly and not fully effective. Light said the viewing of sexually explicit imagery on library computers has amounted to little more than an occasional nuisance—12 arrests for computer-related sex crimes out of 2.1 million library computer sessions in the 2006–2007 budget year.

San Jose State University President Don Kassing said in a letter to the city that filtering any city library computers would "violate the spirit of our joint operating agreement by restricting intellectual freedom." The city's library commission chair and a local Planned Parenthood representative also spoke against filtering.

Light's new report explored various levels of filtering, from using the technology only in children's areas to installing it systemwide. She estimated initial costs would range from $140,000 for filtering only children's computers to $400,000 for screening them throughout the library system and having staffers unblock sites for adults upon request.

City Attorney Rick Doyle recommended against the latter option, saying it could expose the city to lawsuits on free-speech grounds. And he warned that filtering at the jointly run main library would require university cooperation.

Light's report also tested the effectiveness of four Internet-filter systems, including two Constant had recommended, and deemed none fully effective. The report said the filters' overall average success rate in blocking objectionable material while allowing legitimate information was only 76 percent. For example, the report said WebSense, the system used on City Hall computers that Constant suggested could be extended to the libraries, allowed "some

very graphic search results" in some searches and allowed access to Yahoo!'s directory of adult sex chat sites.

Because the filter is geared toward English-language searches, it failed to block access to graphic images in searches for explicit terms in Spanish, the report said. The filter also blocked legitimate information in searches for "gay sex" and other terms library users might enter for research purposes, it said. The report found similar results for Barracuda, another filtering system Constant had suggested.

Constant said that while no system is perfect, some restrictions on obscene material are better than none. He also questioned the library staff's research methods, saying he has personally tested Phoenix's WebSense system and found none of the problems the report cited. He said he was planning a public demonstration in coming weeks to prove that point. Reported in: *San Jose Mercury-News*, May 15.

Panama City, Florida

A book called *The Fighting Ground* was banned from Bay District Schools' library shelves at the June 11 School Board meeting after a split vote. Board members Ginger Littleton and Johnny Brock voted against removing the book, which was written by Avi, an award-winning author of more than a dozen books for young readers. According to the School Board policy, the book ban will be in effect until the official end of the school year.

The Fighting Ground, published in 1984 and intended for the fourth-grade reading level, is about a 24-hour period in the life of a 13-year-old boy during the Revolutionary War. The boy dreams of fighting in the war and being a hero. Against his father's wishes, he joins a fighting unit. He witnesses soldiers dying and is captured by the enemy. He escapes and returns home, happy to be back on the farm with his father.

The book won the Newbery Medal, one of the most prestigious honors in children's literature.

A parent complained about the content of the book after noting several profanities uttered by some soldiers. "He read two pages," Brenda Toole, supervisor of instructional media for the district, said of the parent who made the complaint. "If you read the whole book, you'll see the importance of the book. It's historical fiction."

Toole said she was a member of the committee that recommended keeping the book in libraries. She said the profanities in the book were "not used in a lewd manner;" they were more an expression of fright by soldiers waiting for replacements to fight off approaching Hessians. "We haven't had a challenge in five years," Toole said, adding that she was "surprised" by the board's vote to remove the book.

Board member Pat Sabiston said she voted against keeping the book because of a section she read under 8.505 of the School Board policy on "controversial issues."

"Because of the way our policy is currently written, I felt I had to vote on it that way," she said. "I don't like censorship, but I felt I had no choice." Sabiston referred to the second paragraph of section 8.505 for her reasoning. That paragraph deals with the study of religion or the Bible and relates to course materials. The policy states: "No teacher shall present or permit it to be presented any material which holds up to ridicule any religious sect, belief or faith." Sabiston said she believes the use of the phrase "My God" and a profanity with the word "God" in it puts the book in that category.

Sabiston believes the School Board's policy is not restrictive enough and presented a copy of Bay Haven Charter Academy's library policies for board attorney Franklin Harrison to use in rewriting the board's policy. Sabiston said that under Bay Haven's policy, books considered controversial are kept in a separate area and, if students want to check them out, they must provide written permission from their parent.

Board member Jon McFatter, who said he had not read the book, also found the profanities offensive and voted to have the book removed. "It's disturbing to me that anyone would be interested in reading a book to a fourth-grader that has language which, in my mind, is the worst of profanity. You can't tell a child that character development is important, then not uphold the principles of good character." If a child used this language in school, he would be suspended, McFatter said.

Johnny Brock, who did not read the book, said he put his faith in the members of the district's book review committee when he voted to retain the book. "There's hardly any book where there's not something that might offend someone," Brock said. "The book is not required reading. If it was, I would have voted no real quick."

Board member Ginger Littleton, who has read the book, said she was very disturbed about the removal. "It isn't constitutionally wise to allow one person who reads one page of a book to speak for everyone who might read the entire book," Littleton said. "A child who sees war as glamorous when, in reality, it's mean and ugly, will learn from this book."

The book also contained quotes in German spoken by the Hessians. There was a glossary in the back of the book so readers could read what the characters were saying. Littleton thought that was a great idea. "If a child or parent is offended by a book, put it down," she said. Reported in: *Panama City News-Herald*, June 12.

Nampa, Idaho

In the process of revisiting for the third time whether minors should be denied access to two books about sexuality, the board of the Nampa Public Library approved June 2 policy changes that restrict children's access to any holdings that may fall under the state's harmful to minors statute.

First, trustees voted 3–2 to keep *The New Joy of Sex* and *The Joy of Gay Sex* off the shelves and in the director's office, where patrons must specifically request them to

access them. The board moved the books to the director's office in March by the same 3–2 vote. The board's actions came after Randy Jackson, a local conservative activist, asked the library to remove the books. "I don't think it's inappropriate for a community to say, 'I think we should limit [access],'" board member Kim Keller said.

Keller, who wrote the motion to keep the books sequestered, also proposed requiring parental permission for minors to access any books the library may purchase that state law deems "harmful to minors"; that motion also passed 3–2. Trustee Bruce Skaug also introduced a policy, which barred the library from buying movies rated NC-17 or X; it passed 3–1 with one abstention.

Library Director Karen Ganske noted that she was unaware of any items in the collection with those MPAA ratings. Trustee Sandi Levi countered that NPL owned an unrated DVD of The Vagina Monologues, which she characterized as including graphic language, and declared, "I would not want my child, my friend's child checking that out," Levi explained.

A June 4 posting at the socially conservative blog for the Idaho Values Alliance offers "kudos to [Nampa] Mayor Tom Dale, who appointed family friendly members to the board to replace members who insisted that gay porn remain accessible for young children." Dale confirmed in 2006 that he had e-mailed a concerned constituent that he would "help the board understand that they do have broad authority in determining the books placed in the library collection, and their status therein."

In a related development, attorney Bruce Skaug, who played a large role in taking the two sex books off the regular shelves at the Nampa Public Library, resigned from the library's board of trustees. "My short-term mission is accomplished," Skaug said about his role in getting the books placed in the library director's office where library patrons must ask for them. "Being a little bit of a lightning rod . . . that was needed to get some changes, it's just better that I'm gone from the library."

Skaug said that he e-mailed his resignation to Mayor Dale. His resignation is effective July 1, he said. His term would have lasted until December.

Nampans fell on both sides of the library sex book issue, some saying they were pornographic and needed to be removed from the library and others saying removal of the books amounted to censorship. Nampa social worker Delmar Stone, an outspoken supporter of keeping the books on the library shelves, said he was glad to see Skaug resign. Stone said Skaug made "bigoted" comments regarding gays and lesbians while serving on the library board.

"I hope that whoever replaces him will respect all of the residents of Nampa, including her gay and lesbian citizens and her single parents," Stone said.

Skaug has crusaded against what he sees as pornography before. He won an obscenity prosecution case in Ada County against two Garden City book stores in the early 1990s, he said. "It's a subject that I've always been attacking because I see the harm it does to families," he said.

Skaug said he complained about the sex books in the Nampa Library to Mayor Dale and the Nampa City Council before serving on the board. While he said Dale did not appoint him because he was opposed to the library having the books in its collection—"It was not an acid test for serving on the board"—he said the mayor did know his position on the issue. Dale denied appointing members to the library board because of their position regarding the books.

In resigning, Skaug said he regretted writing an anonymous comment on a Nampa blog in which he defended the library board's decision to remove sex books from the library's shelves. Skaug said in the comment written on the local blog, The Unequivocal Notion, that those who opposed the board's decision had a "messed up view of sex" and "cannot understand people who wish to protect children from becoming people like you." Skaug said he wrote the comment in the heat of the moment and called it "stupid."

"I was mad and I fired off a sarcastic remark," Skaug said. "It was a stupid remark on my part where I stooped to a sophomoric-level comment on a blog."

Skaug said since joining the library board and dealing with the sex book issue, he has received several obscene pieces of hate e-mail and postal mail. His not being able to respond to such comments was part of the frustration that led to the blog post, he said. The post did not have anything to do with his resignation, both Skaug and Nampa Mayor Tom Dale said. Reported in: *American Libraries Online*, June 6; *Idaho Press-Tribune*, June 10.

Royal Oak, Michigan

The public library in Royal Oak will get filtering devices on all but one of the computers used by adults following passage May 19 of an ordinance aimed at restricting Internet access. In a 4–3 vote, the City Commission mandated the installation of software technology designed to block adult computer users from viewing websites with obscene material.

The Royal Oak Public Library has always filtered computers in its children's department. The February arrest of a man who allegedly looked at child pornography in the adult computer lab resurrected the debate of filtering those terminals, too.

City Commissioners Michael Andrzejak, Terry Drinkwine, Stephen Miller and Chuck Semchena backed the ordinance. They said they want to provide maximum protection to library patrons and employees who could walk by a computer screen showing pornography and anyone who wouldn't want to share the facility with someone looking for that kind of information.

"I believe there's a danger from people willing to commit these crimes not only at home in private but in a public place," Semchena said. Semchena also said he was looking

for a reason to change his vote but doesn't think the steps taken by the Library Board of Trustees, such as requiring adults to show identification before using a computer, go far enough. "I think you did some good work but it doesn't rise to that level for me," Semchena told library board members who attended the commission meeting.

Drinkwine complimented the board for its stricter ID policy, which has significantly reduced demand for computer time, according to library officials. "You have to wonder why that it is," Drinkwine said. If the filters end up blocking access to legitimate research, too, the commission can reconsider the ordinance, Drinkwine added. "It's not something we can't revisit if you prove it is totally unworkable," he told the library board. "The only way we will know is to put it into practice and see how it shakes out."

Mayor James Ellison and City Commissioners Carlo Ginotti and Gary Lelito said they don't think the ordinance is necessary. No filters block all pornography and the devices can prevent people from going to useful websites dealing with health issues, such as sexually transmitted diseases.

"You can't protect yourself from a chainsaw by taking away 50 percent of its teeth," Ellison said. "A filter might cut out some of what is out there but it can't filter all of it."

The mayor said he prefers filtering patrons with ID checks and constant staff monitoring, which the library does, instead of filtering Internet content. "I think the library board has the situation under control," Ellison said just before the vote. "But the ordinance will pass. We will filter our computers and go from there. I wish it wasn't happening but it's not the end of the world."

Ordinances go into effect ten days after passage. David Palmer, the library board chairman, said the volunteer group would act as quickly as it can to comply. "We have a directive and we will move ahead with it," Palmer said.

One computer must be left unfiltered for Royal Oak to comply with the Michigan Library Privacy Act, which was amended in 1999 to strike a balance between respecting the free speech and privacy of adults while protecting children from obscene material.

Royal Oak could be the first city in Michigan to pass an ordinance forcing the library board to install filters, according to a spokesperson with the Michigan Municipal League. Other libraries leave only one terminal unfiltered as a matter of policy.

In his opposition to the ordinance, Ginotti said, "The worst way to fix a problem is to legislate it." However, Andrzejak said he hasn't heard any public outcry in the cities where public libraries filter computers to the maximum level allowed by state law.

"I've been involved in this discussion going back a decade when I was on the library board and advocated for filters," Andrzejak said. "I'm not a holy roller. I'm not a liberal. I'm a man in the middle and I think this is right for the community." Reported in: *Royal Oak Daily Tribune*, May 20.

Brooklyn, New York

Public libraries have always been great places for learning, but parents who use several Brooklyn libraries said their children are learning too much as adults nearby look up racy materials while surfing the Internet. At the Brooklyn Public Library, the policy is simple: Kids use computers in one room and adults use equipment in another. And while nothing stops children from using the adult terminals, kids are restricted to logging on with a card that filters out adult websites.

"I think it's good," Tyler Centeno of Park Slope said. "So we don't go on anything inappropriate and stuff like that."

But Dr. Susan Fox, who runs an online community of 6,000 members called Park Slope Parents, said many parents have complained recently about what adults view at the library. "They go to a public place and there's somebody looking at porn, and your child is like ten feet away," Fox said.

Library officials acknowledge it's one of those twenty-first-century challenges, when more people who enter a library log into a computer than open a book. The Brooklyn Library website says, "As a community space, we share in the responsibility with parents and care-givers to minimize children's exposure to adult-themed material." The library said it would not censor adult computers because it's unconstitutional.

Fox suggested that the library keep unlimited access computers out of the sight of children. "It's not a censorship issue," she said. Reported in: wnbc.com, May 14.

San Antonio, Texas

Some patrons of San Antonio's public libraries are upset over the lack of website filtering, which has allowed pornographic websites to be viewed on public computers. According to library officials, user logs show that less than one percent of all the sites viewed on its computers were of sexually explicit websites, but some parents are angry that any are allowed to be viewed in the same libraries their children use.

"I'm angry," District 4 City Councilman Philip Cortez said. "Obviously, the current policy is not working and we need to look at more aggressive approaches."

Library director Ramiro Salazar said the logs serve as an example of how the problem of pornographic browsing is well-managed by its librarian monitors. "When you look at the scheme of things, that's a very small percentage," he said.

Cortez disagrees. "If it's happening just one time anywhere throughout the city, then it's happening one time too many," he said.

One parent said that the proper solution—whatever it is—should be enacted. "If I have to do it at home, I'd like to know that my tax dollars are doing it here as well," library-goer Jennifer Ferrill said. Reported in: ksat.com, May 20.

school

Baldwinsville, New York

When Donald Crobar's 16-year-old daughter asked him to define a particular sex act she had never heard of before, he was shocked and embarrassed and sent his daughter to talk to her mother. When Crobar learned that his daughter heard the term from a book she was reading for her English 11 Regents class at Baker High School in Baldwinsville, he was angry.

Now, he is asking the school district to remove the book from its curriculum. Superintendent Jeanne Dangle said the district was reviewing his complaint. Crobar said the superintendent told him the school will continue to use the book.

The book in question is *A Girl's Life Online*, by Katherine Tarbox. It was one of the five books students could select for the contemporary literature class unit on "teenage struggles," Crobar said. The book—originally published as *Katie.com* in 2000—is a memoir that details the author's online relationship with a 41-year-old male sexual predator and describes various sexual activities. In the book, the author was 13 and believed the man was 23. Tarbox's case was one of the first to be tried under the 1996 Communications Decency Act.

Dangle said the book is a cautionary tale about Internet safety, something all students should know. She said she has not read the book, but teachers and other district administrators have, and they warned students that it contains "some questionable material."

"This unit looks at current-day topics. . . . There is a lot of questionable material out there; we're aware of that," she said. "We try to balance whether a few pages are enough to outweigh the greater message we want our students to get."

Crobar said he read up to the two pages he most strongly objects to—pages 57–58—before he was "so disgusted" that he couldn't read anymore. Those two pages include a discussion between the author and two friends about different sex acts and the sexual experiences one of the girls had had with boys. Crobar said he supports teaching Internet safety, but said his daughter received no warning in class about the book's graphic language before selecting it. Once she reached page 57, he said he was told it was too late for his daughter to change books for that particular class unit, and she had to finish reading *A Girl's Life Online* despite her own and her father's objections.

Dangle said Crobar's daughter could have changed books, but Crobar never spoke directly to his daughter's teacher. He went to the vice principal, and the teacher learned later from administrators that a parent had complained. Dangle said this book has been used for several years and no one has complained before.

"Either the kids didn't read far enough into the book, or they just read it and tee-hee'd about it, or they were uncomfortable and just didn't tell their parents," Crobar said about the lack of other complaints. "This is not a health class. This is an English class. It's just not appropriate."

Crobar said he was frustrated that it took seven weeks for the school district to make a decision. Crobar said his daughter's twin sister, who is in a different English class, selected a different book for that topic that he felt was appropriate. Reported in: *Syracuse Post-Standard*, May 20.

student press

Eureka, California

As the managing editor of the Eureka High School newspaper, the *Redwood Bark*, junior Drew Ross probably figured he'd gain some insight into the role a free press plays in a democracy. Ross learned that Eureka High School is not a democracy.

Ross and his fellow news staffers watched in April as the month's issue of the *Bark* was pulled from the newsstands by EHS Principal Robert Steffens, who said a drawing on the paper's back page depicting a woman in the nude sparked some controversy among students.

"They felt it just wasn't appropriate for a student newspaper and asked for permission to take them off the racks," Steffens said, adding that he feared a situation was developing that would pit one faction of the student body against another. "I just didn't want to run into that conflict."

So, four days after the paper hit the newsstands, Steffens pulled all the remaining copies, and may have overstepped his legal bounds, according to a student journalism law expert.

"It wasn't censorship so much as restricted circulation," Steffens said, adding that he allowed the paper to keep the controversial drawing, and the story accompanying it, on the paper's website at www.redwoodbark.net.

Ross, however, looks at things differently. He sees the hard work he and his staff poured into the paper, and he sees that this issue won't come close to the paper's approximate 1,100 circulation average now that it is off the racks. "For all that to be thrown down the drain—it's really disappointing to us," Ross said.

Ross also takes issue with the notion that Natalie Gonzalez's drawing in the paper's art section, which depicts two nude female figures in a dream-like scene with fairies, is obscene. The article on Gonzalez accompanying the drawing, Ross said, addresses the issue of nudity in Gonzalez's work with maturity, and he wished his fellow students and school administrators had done the same.

"Art is free, and if we want high school students to act as adults, we should treat them as adults, and expect them to take nudity in a mature way," Gonzalez is quoted as saying in Kristen Springer's *Redwood Bark* article. "And, I don't ever want anyone, including myself, to be limited when it comes to art."

But not everyone has seen the drawing in the same light. Eureka City Schools Superintendent Gregg Haulk said he

received a handful of calls from concerned parents. "Their question was, does this belong in a high school newspaper? What's the importance of putting this in a high school paper?" he said, quick to add that Steffens' decision to pull the papers was made independent of parental concerns. "He pulled it of the rack because it was becoming a disruption to our learning environment. First and foremost, we are a learning institution."

Philip Middlemiss, an EHS teacher who advises the *Redwood Bark*, agreed that the school is a learning institution, and he's trying to make the most of this experience for his students. "Nothing is a better educator than experience," Middlemiss said. "Now, suddenly, the issue is about student rights, and as an adviser it's my job to protect student rights, and that means protecting democracy."

According to Student Press Law Center Executive Director and attorney Frank LoMonte, Middlemiss's news crew might be standing on pretty firm ground in that fight. In 1988, the U.S. Supreme Court ruled in *Hazelwood* v. *Kuhlmeier* that there are essentially two types of student newspapers: autonomous ones that have traditionally served as a student forum, and ones that are typically part of the school curriculum and have always been reviewed by administrators for content.

Because the administration has never made it a practice to review the publication before its production under Middlemiss's 18-year tenure as adviser, LoMonte said the *Redwood Bark* clearly falls into the first category as an autonomous paper. Eureka High School administrators therefore can't censor the paper without showing its publication would jeopardize student safety or disrupt their ability to control the school.

"The example would be literally publishing something that would urge kids to walk out of school, or beat up other students," LoMonte said.

But the staff of the *Redwood Bark*, as California students, have even more protection under the law, according to LoMonte. He pointed to the California Free Expression Law, which explicitly provides student journalists attending public high schools with added protection against censorship.

The fact that the *Redwood Bark* controversy surrounds a work of art also places school administration on a slippery slope, LoMonte said, asking if it would now start looking through art textbooks to remove depictions of people in the nude.

At Eureka High School, both sides seem to be digging in. Steffens and Haulk said the district would likely be looking at creating a policy to oversee its student productions, and Steffens maintained that students working on the school paper need to remember they are representing the school.

"As independent individuals, they can put anything out they want," Steffens said. "But under the guise of Eureka High School, they have to represent Eureka High School."

Back in the newsroom, Ross is standing firm that he wants to see his papers returned to the racks. He said his staff worked hard on producing the paper, and advertisers paid to run their ads in papers that are no longer available, which places the newspaper on uneasy footing.

"Hands down, we want our paper back," Ross said, adding if the papers have been disposed of, the news staff would raise funds to reprint them. Reported in: *Eureka Times-Standard*, April 30.

art

New Haven, Connecticut

A Yale University student's art project that portrays her as inducing her own abortions has drawn a firestorm of criticism from all along the ideological spectrum, but it is protected by intellectual and artistic freedom, said officials of groups that defend that principle.

Yale should not only refuse to bow to outside pressure to cancel a planned exhibition of the artwork, the officials said, but the university also should use the exhibit as a tool to explain the value of free expression, even in cases when what is said or displayed is offensive.

"Academic freedom for faculty and intellectual freedom for students give them the right to speech that shocks and challenges," said Cary Nelson, president of the American Association of University Professors,

While Yale did not cancel the exhibit of the work, university officials distanced themselves from the project. On April 18, Yale issued a written statement in which two deans said the project should not have been permitted to go forward and it was not appropriate work for an undergraduate.

"I am appalled," Peter Salovey, dean of Yale College, said in one of the statements. "The dean of the School of Art and I are reassessing what constitutes an appropriate senior art project and the manner in which those projects are mentored."

Perhaps as much as any academic controversy since a how-to conference on women's sexuality at the State University of New York at New Paltz, in 1997, the episode at Yale prompted questions about what constitutes legitimate academic work and how far universities should go in giving voice or providing a platform to students who express outrageous and offensive opinions. The incident also caused people who already are skeptical about what they see as an anything-goes attitude in higher education to feel even more alienated from the world of academe.

"To the extent institutions are prepared to condone this sort of thing, or see it as part of the educational experience they provide, that really suggests a loss of all moral compass," said Stephen H. Balch, president of the National Association of Scholars. "This is not an issue of what the student could do out in the public square. It's about what a university is prepared to legitimate as part of its own education."

The controversy began on April 17 after the *Yale Daily News*, a student newspaper, published an article about a

coming exhibit by Aliza Shvarts, a Yale senior majoring in art. On April 11, at a forum of art students, and later in a news release, Shvarts said she had repeatedly inseminated herself with donated sperm over about nine months' time, and then prompted abortions by using herbs.

She said her actions were part of an art exhibit in which she planned to suspend a large cube from the ceiling of a room in the gallery of Holcombe T. Green Jr. Hall. She planned to wrap the cube in sheets covered with blood from the abortions, she said. She also planned to project onto the sides of the cube video images of herself inducing the abortions in her own bathroom, while she experienced cramps and caught blood in a cup.

The extraordinary story quickly hit the blogosphere and prompted widespread shock and disgust. Then Yale issued a statement saying the abortions had never really happened. It said Shvarts had acknowledged to administrators that the apparent abortions depicted in her video were not real and that her exhibit was performance art, not real life.

"The entire project is an art piece, a creative fiction designed to draw attention to the ambiguity surrounding form and function of a woman's body," Helaine S. Klasky, a university spokeswoman, said in the statement. She also said Shvarts "is an artist and has the right to express herself through performance art."

The story took another turn, however, when Shvarts was quoted, once again in the *Yale Daily News*, as saying that the abortions were real, something that Yale officials said she told them she would do if they issued a statement calling her work fiction.

"Her denial is part of her performance," Klasky wrote in an e-mail message to the *Yale Daily News*. "We are disappointed that she would deliberately lie to the press in the name of art."

Yale officials asked Shvarts again whether she had actually induced abortions, and again, Yale said in another statement, she told them she had not. That's when Yale's deans got involved, issuing harsher statements saying the project never should have been approved.

Whether or not the abortions actually happened, some people wonder why Yale professors approved the project for academic credit. "Which is sicker: if she really did it, or if she made it up?" asked one post on American Digest, a blog. "Either way Yale is a loser," it said. "Why do we give them a tax exemption?"

Anne D. Neal, president of the American Council of Trustees and Alumni, said the issue was not so much Shvarts and her work but academic oversight and professional judgment. "Yale ought to be focusing not on Shvarts, but on the institutional framework that (she claims, at least) approved and supported this project," Neal said.

Shvarts told the *Yale Daily News* that her project had been supported by administrators and by her thesis adviser, a lecturer in art who has not talked to reporters about the controversy. "I hope it inspires some sort of discourse," Shvarts told the student newspaper. "Sure, some people will be upset with the message and will not agree with it, but it's not the intention of the piece to scandalize anyone."

John K. Wilson, who writes about academic freedom and runs a website called College Freedom, said the student's artwork was a prime example of why intellectual freedom is important. Yale should use the episode to explain that universities need to worry that such incidents can tarnish their image with the public, alumni, and donors, he said, but "academe is about having standards of intellectual freedom, even when they are unpopular and when they make you look bad."

Robert M. O'Neil, a free-speech expert at the University of Virginia, agreed that displaying Shvarts's artwork was about freedom of expression. "Art departments have always been and must remain shelters for creativity which sometimes offends and often challenges," said O'Neil, who is director of the university's Thomas Jefferson Center for the Protection of Free Expression. But he also acknowledged that such a message "doesn't usually go down terribly well with people in the outside world." Reported in: *Chronicle of Higher Education* online, April 21.

Charlottesville, Virginia

As the saying goes, "Every dog has his day." Well, the dog formerly at the center of Irwin Berman's exhibit at the University of Virginia Art Museum has left the school with a steaming, heaping pile of orange and blue turds on its paws. The artist said he has no problem with that, though his collaborators may see it differently.

As part of his show, "Sedentary Pleasures," which opened at the Art Museum on May 2, Berman—an alumnus of the Medical School and a sculptor—crafted a four-legged milking stool piled high with fake dog droppings. After learning about "Seal," the canine mascot of UVA until his death in 1953, Berman wrote and produced a three-and-a-half minute short film that mythologizes the stool's origin. For that project he had help from UVA alums Michael Wartella and Sam Retzer and Associate Professor of Art William Bennett. In the film, an enormous dog's face devours a Cavalier figure and then rains multi-colored poop down from the sky; blue and orange coils amass on top of a stool that resembles the piece in Berman's show.

"This was all supposed to be part of this show, to be shown at the Museum," said Bennett. "Somehow, somebody in the University administration—not sure who, how or why—decided this film wasn't appropriate for exhibition." Berman's original intention, according to Bennett, was to give the film away in exchange for donations to the UVA Art Museum or the Art Department. However, Bennett said that UVA pulled both the stool and the film from the exhibit.

Later, Berman said The Great Seal was simply one of

four pieces not selected for the final exhibit; an e-mail from the artist clarified that the grounds for this decision "reflected sound curatorial judgments by the Museum Director and Curator," Elizabeth Hutton Turner. As previously reported, former museum director Jill Hartz was removed from her position and replaced by Turner, the vice provost for the arts at UVA.

Instead, the stool and the film were placed on display at Les Yeux du Monde, a local gallery. Reported in: c-ville .com, May 2.

advertising

New York, New York

Dunkin' Donuts canceled an online advertisement featuring celebrity chef Rachael Ray after complaints that a scarf she wore in the ad offers symbolic support for terrorism. Dunkin' Donuts said May 28 that it pulled the ad because of what it calls a "misperception" about the scarf that detracted from its original intent to promote its iced coffee.

Critics, including conservative commentator Michelle Malkin, complained that the scarf appeared to be traditional garb worn by Arab men. The ad's critics say such scarves have come to symbolize Muslim extremism and terrorism. Reported in: *Chicago Tribune*, May 29.

foreign

Bristol, England

Storybooks on homosexual relationships have been withdrawn from two Bristol primary schools following objections from parents. Tension escalated when parents from Church of England affiliated Easton Primary School in Beaufort Street and Bannerman Road School in All Hallows Road demonstrated outside the schools on March 18 upon discovering their children were given two storybooks about homosexual relationships.

At the center of the controversy is *King & King*, a fairytale about a prince who rejects three princesses before marrying one of their brothers. The second book, *And Tango Makes Three*, is based on two male Penguins in a zoo who mate.

Parents objected to the books on the grounds that the material was unsuitable for children, and that they had not been consulted on their opinions. National media hinted that the removal of the books was due to a predominant Muslim protest, but Farooq Siddique, of Bristol Muslim Cultural Society, said the complainants had constituted "Some non-Muslim and majority Muslim reflecting the makeup of the schools."

They had complained, but he stressed, "not a single Muslim parent, repeat: not a single Muslim parent has to this day, made any objection to tackling homophobic bullying."

Green Party Council candidate, Tony Gosling, said he was "personally disgusted" by the books. "No way should kids be indoctrinated in this way. Anyone who says so is branded as homophobic which they are not; it's the gay mafia in full swing," he said.

In the United States, *And Tango Makes Three* was the most challenged book of 2006 (see cover story). This year, it was temporarily removed from primary schools across the state of Virginia. In 2006, *King & King* was the subject of a failed law suit in Massachusetts where parents had argued that the book constituted sexual education without parental notification, which would be a violation of their civil rights and state law.

Siddique said the main issue was the "total lack of consultation with parents. The agenda was to reduce homophobic bullying and all the parents said they were not against that side of it, but families were saying to us 'our child is coming home and talking about same-sex relationships, when we haven't even talked about heterosexual relationships with them yet.' They don't do sex education until Year Six and at least there you have got the option of withdrawing the children."

Bristol City Council said the removal of the books was temporary while the school sought to "meet their legal responsibilities and operate safely."

Describing the council's decision to withdraw the books temporarily Siddique said, "This is really a matter of closing the stable door after the horse has bolted. But it was necessary in this case to calm the current tensions that exist, and bring the parents back into the fold. I'm sure you will agree that if a program designed to decrease homophobia actually ends up increasing it, it has failed."

A Bristol City Council spokesperson said the books were produced by "No Outsiders," a group of academics teaching to prevent homophobia.

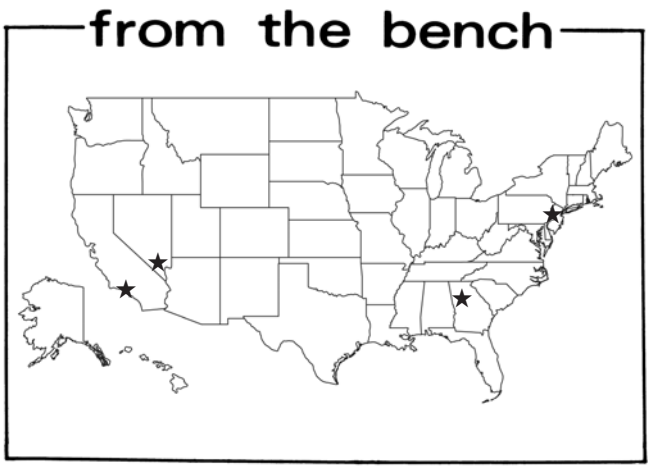
The Council denied the material was inappropriate for younger children, insisting they were "developed as appropriate tools for primary school age children."

Referring to Section 89 of the Education and Inspections Act 2006, the Council challenged claims that the books are sex education materials, insisting they are merely designed to "tackle homophobia and acknowledging same sex relationships, and children of same sex parents, as equally valued and respected relationships and families in our society."

The spokesperson also insisted "consultation with parents was carried out in advance of these materials being used. Further work is being done with parents and the local community to explain why materials are being used within the school curriculum."

Siddique, who is also a governor at Bannerman Road School, denied any adequate consultation took place. "The breakdown in relationships was due to teachers fudging the

(continued on page 166)



U.S. Supreme Court

Foreign terrorism suspects held at the Guantánamo Bay naval base in Cuba have constitutional rights to challenge their detention there in United States courts, the Supreme Court ruled, 5–4, on June 12 in a historic decision on the balance between personal liberties and national security.

"The laws and Constitution are designed to survive, and remain in force, in extraordinary times," Justice Anthony M. Kennedy wrote for the court.

The ruling came in the latest battle between the executive branch, congress, and the courts over how to cope with dangers to the country in the post–September 11 world. Although there have been enough rulings addressing that issue to confuse all but the most diligent scholars, this latest decision, in *Boumediene* v. *Bush*, may be studied for years to come.

In a harsh rebuke of the Bush administration, the justices rejected the administration's argument that the individual protections provided by the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006 were more than adequate.

"The costs of delay can no longer be borne by those who are held in custody," Justice Kennedy wrote, assuming the pivotal role that some court-watchers had foreseen.

The issues that were weighed in the ruling went to the very heart of the separation-of-powers foundation of the United States Constitution. "To hold that the political branches may switch the Constitution on or off at will would lead to a regime in which they, not this court, say 'what the law is,'" Justice Kennedy wrote, citing language in the 1803 ruling in *Marbury* v. *Madison*, in which the Supreme Court articulated its power to review acts of Congress.

Joining Justice Kennedy's opinion were Justices John Paul Stevens, Stephen G. Breyer, Ruth Bader Ginsburg and David H. Souter. Writing separately, Justice Souter said the dissenters did not sufficiently appreciate "the length of the disputed imprisonments, some of the prisoners represented here today having been locked up for six years."

The dissenters were Chief Justice John G. Roberts, Jr., and Justices Samuel A. Alito, Jr., Antonin Scalia and Clarence Thomas, generally considered the conservative wing on the high court.

Reflecting how the case divided the court not only on legal but, perhaps, emotional lines, Justice Scalia said the United States was "at war with radical Islamists," and the ruling "will almost certainly cause more Americans to get killed."

"The nation will live to regret what the court has done today," Justice Scalia said.

Chief Justice Roberts said the majority had struck down "the most generous set of procedural protections ever afforded aliens detained by this country as enemy combatants," and in doing so had left itself open to accusations of "judicial activism." The chief justice said the majority had gutted the Detainee Treatment Act without really giving it a chance. "And to what effect?" he wrote. "The majority merely replaces a review system designed by the people's representatives with a set of shapeless procedures to be defined by federal courts at some future date."

Indeed, the immediate effects of the ruling are not clear. For instance, Cmdr. Jeffrey Gordon, a Pentagon spokesman, told the Associated Press he had no information on whether a hearing at Guantánamo for Omar Khadr, a Canadian charged with killing an American soldier in Afghanistan, would go forward as planned. Nor was it initially clear what effects the ruling would have beyond Guantánamo.

The 2006 Military Commission Act stripped the federal courts of jurisdiction to hear habeas corpus petitions filed by detainees challenging the bases for their confinement. That law was upheld by the United States Court of Appeals for the District of Columbia Circuit in February 2007.

At issue were the "combatant status review tribunals," made up of military officers, that the administration set up to validate the initial determination that a detainee deserved to be labeled an "enemy combatant."

The military assigns a "personal representative" to each detainee, but defense lawyers may not take part. Nor are the tribunals required to disclose to the detainee details of the evidence or witnesses against him—rights that have long been enjoyed by defendants in American civilian and military courts.

Under the 2005 Detainee Treatment Act, detainees may appeal decisions of the military tribunals to the District of

Columbia Circuit, but only under circumscribed procedures, which include a presumption that the evidence before the military tribunal was accurate and complete.

The June 12 ruling focused in large part on the centuries old writ of habeas corpus ("you have the body," in Latin), a means by which prisoners can challenge their incarceration. Noting that the Constitution provides for suspension of the writ only in times of rebellion or invasion, Justice Kennedy called it "an indispensable mechanism for monitoring the separation of powers."

In the years-long debate over the treatment of detainees, some critics of administration policy have asserted that those held at Guantánamo have fewer rights than people accused of crimes under American civilian and military law and that they are trapped in a sort of legal limbo.

Justice Kennedy wrote that the cases involving the detainees "lack any precise historical parallel. They involve individuals detained by executive order for the duration of a conflict that, if measured from September 11, 2001, to the present, is already among the longest wars in American history."

President Bush did not immediately react to the court's decision. "People are reviewing the decision," Bush's press secretary, Dana M. Perino, said. The president has said he wants to close the Guantánamo detention unit eventually.

The detainees at the center of the case are not all typical of the people confined at Guantánamo. True, the majority were captured in Afghanistan or Pakistan. But the man who gave the case its title, Lakhdar Boumediene, is one of six Algerians who immigrated to Bosnia in the 1990's and were legal residents there. They were arrested by Bosnian police within weeks of the September 11 attacks on suspicion of plotting to attack the United States embassy in Sarajevo—"plucked from their homes, from their wives and children," as their lawyer, Seth P. Waxman, a former solicitor general put it in the argument before the justices on December 5.

The Supreme Court of Bosnia and Herzegovina ordered them released three months later for lack of evidence, whereupon the Bosnian police seized them and turned them over to the United States military, which sent them to Guantánamo.

Waxman argued before the United States Supreme Court that the six Algerians did not fit any authorized definition of enemy combatant and therefore ought to be released.

The head of the New York–based Center for Constitutional Rights, which represents dozens of prisoners at Guantánamo, hailed the ruling. "The Supreme Court has finally brought an end to one of our nation's most egregious injustices," Vincent Warren, the organization's executive director, told The Associated Press.

Senator Barack Obama of Illinois, the presumptive Democratic presidential nominee, has called for closing the Guantánamo detention unit. So has his Republican opponent, Senator John McCain of Arizona. But the issue of what to do with the detainees could still figure prominently in the campaign, as McCain's remarks signaled.

Speaking to reporters in Boston, McCain said he had not had time to read the decision, but "it obviously concerns me. These are unlawful combatants, they're not American citizens, and I think that we should pay attention to Justice Roberts's opinion in this decision," McCain said. "But it is a decision the Supreme Court had made, and now we need to move forward."

McCain, who was held for more than five years as a prisoner of war in Vietnam, was one of the chief architects of the Military Commissions Act of 2006. He argued during the drafting of that law that it gave detainees more than adequate provisions to challenge their detention."

Senator John Kerry of Massachusetts, the 2004 Democratic presidential nominee, applauded the ruling. "Today, the Supreme Court affirmed what almost everyone but the administration and their defenders in congress always knew," he said. "The Constitution and the rule of law bind all of us even in extraordinary times of war. No one is above the Constitution."

Anthony Coley, a spokesman for Senator Edward M. Kennedy, Democrat of Massachusetts, said: "When Congress passed the Military Commissions Act in 2006, Senator Kennedy called the act 'fatally flawed' and said 'its evisceration of the writ of habeas corpus for all noncitizens is almost surely unconstitutional.' Today, the Supreme Court agreed, and rejected the Bush administration's blatant attempt to create a legal black hole beyond the reach of the rule of law." Reported in: *New York Times*, June 13.

schools

Clark County, Nevada

Public schools don't violate students' freedom of expression by requiring them to wear uniforms, a federal appeals court in San Francisco ruled May 12. In a 2–1 decision, the U.S. Court of Appeals for the Ninth Circuit upheld a Nevada school district's clothing rules against challenges from students, including a high school junior who was suspended five times for a total of 25 days for wearing a T-shirt with religious slogans.

The Clark County School District's policies were not intended to squelch free speech, but instead were aimed at "creating an educational environment free from the distractions, dangers and disagreements that result when student clothing choices are left unrestricted," Judge Michael Hawkins said in the majority opinion.

Dissenting Judge Sidney Thomas said the ruling was at odds with the U.S. Supreme Court's landmark 1969 decision that upheld a student's right to wear a black armband, in protest of the Vietnam War, as long as it did not disrupt the classroom. Under the appellate ruling, Thomas said, a school could prohibit such protests, or any other attire that expressed an opinion, by requiring students to wear uniforms.

The students' lawyer, Allen Lichtenstein of the American Civil Liberties Union of Nevada, said he would ask the full appeals court to set the ruling aside and order a rehearing before a larger panel. He said the ruling could be extended beyond schools and might allow a city to ban political expression in some public areas.

As a constitutional interpretation, the ruling is binding on federal courts in nine states, including California. But parents in California still have the right under state law to exempt their children from a school's requirement to wear uniforms. No such opt-out right exists in Nevada, where state law requires schools merely to consult with parents before requiring uniforms. The Clark County district, which includes Las Vegas, requires its schools to get approval from 55 percent of the parents to impose a uniform requirement on all students.

Lead plaintiff Kimberly Jacobs attended Liberty High School, which required students to wear khaki-colored bottoms and solid-color tops, with no writings except the school logo. After Jacobs was repeatedly suspended for wearing a shirt that expressed her Mormon beliefs, a federal judge ruled in her favor in 2005 and ordered the school to stop enforcing its policy against her and erase records of the suspensions.

But the appeals court said the policy is valid because it promotes legitimate educational goals—such as safety and the removal of distractions from learning—and applies equally to all written expression on clothing, regardless of content. In contrast to the black armbands in the 1969 Supreme Court case, which were prohibited because of the opinion they expressed, the Las Vegas high school banned all apparel-related expression except the school logo, which conveys no particular message, Hawkins said. He said students remain free to express their opinions in conversations, school newspaper articles or in after-school attire. Reported in: *San Francisco Chronicle*, May 12.

academic freedom

Irvine, California

How far can one scientist go in criticizing the work of another before committing libel? A California judge decided this week that, at least in the bizarre case of a controversial study involving prayer, words like "fraud," "guilty," and "plagiarism" are fair game in the scientific literature.

"We're breathing a sigh of relief," said Bruce L. Flamm, who wrote those critical words about the study. The resolution to the case was a victory for academic freedom, said Dr. Flamm, a volunteer clinical professor of obstetrics and gynecology at the University of California at Irvine and a physician with Kaiser Permanente.

But he also said the lawsuit brought against him last year would have a chilling effect on scholarly discourse. "I've spoken to colleagues who find the lawsuit to be absolutely frightening," he said.

The case centers on a 2001 study published in *The Journal of Reproductive Medicine*. The paper purported to show that prayer by anonymous people in North America and Australia could double the chances of success for South Korean women undergoing fertilization procedures, who were unaware of the prayers. The authors of that paper were Kwang Y. Cha, a prominent fertility specialist in South Korea and California; Rogerio A. Lobo, a professor of obstetrics and gynecology at Columbia University Medical Center; and Daniel Wirth, a lawyer who studies the paranormal.

In 2004, Wirth pleaded guilty to mail-fraud and bank-fraud charges unrelated to the study. Dr. Lobo later withdrew his name from the study. Dr. Cha, however, continued to defend the work against scholars who denounced it.

In the suit, filed last year, Dr. Cha accused Dr. Flamm of defamation of character for statements that Dr. Flamm made in an article in a medical newspaper. Dr. Flamm wrote that Dr. Cha had been charged with plagiarism in connection with a 2005 article. In reference to the 2001 prayer study, Dr. Flamm wrote that "this may be the first time in history that all three authors of a randomized, controlled study have been found guilty of fraud, deception, and/or plagiarism."

Dr. Flamm responded to Dr. Cha's suit by filing a so-called anti-Slapp motion, designed to protect against a "strategic lawsuit against public participation," known as a Slapp. California and 25 other states have anti-Slapp statutes that are intended to "protect people's First Amendment right to petition the government and to speak out on public issues," said Mark Goldowitz, a lawyer and director of the California Anti-Slapp Project, a public-interest organization that specializes in First Amendment cases.

Judge James R. Dunn, of the California Superior Court for Los Angeles County, originally ruled in favor of the anti-Slapp motion in November, but he later negated that decision after Dr. Cha's lawyers successfully argued that the court should consider further evidence before dismissing the case. After considering that evidence, Judge Dunn granted the motion to strike the case under the provisions of the anti-Slapp statute.

According to the anti-Slapp law, Dr. Flamm should be able to recover his legal fees from Dr. Cha. The financial provision of the law helps people who could not otherwise afford a lawyer and also serves as a deterrent, keeping people from filing lawsuits intended to suppress protected speech, said Goldowitz. Reported in: *Chronicle of Higher Education* online, April 23.

university

Atlanta, Georgia

A federal judge has ruled that the Georgia Institute of Technology had materials in its office to support gay stu-

dents that amounted to unconstitutional support for some religious groups over others.

The case may have no practical impact at Georgia Tech as the materials in question are already gone. But the legal group that brought the suit and other analysts agree that such materials may well exist at other public colleges and may now become the focus of more scrutiny or legal battles. The Georgia Tech ruling is believed to be the first of its kind.

The ruling came in a case involving a range of issues over speech codes and support for religious groups at Georgia Tech—issues that mirror those being raised at other public colleges and many of which were resolved in earlier rulings or agreements between the parties in the case. The new part of the ruling, however, focused on a set of materials used in the "Safe Space" program at Georgia Tech, a part of the institute's diversity office designed to support gay and lesbian students.

The case was filed on behalf of two Georgia Tech students, assisted by the Alliance Defense Fund, a legal group that has sued many public colleges accusing them of violating the rights of religious students. The portion of the suit about Safe Space argued that materials at the public university were effectively religious in that they endorsed some faiths over others—and that these materials were as a result unconstitutional. Judge J. Owen Forrester agreed.

The materials in question dealt with issues that may be faced by religious gay students, or by gay students challenged about their sexuality by people from different faiths. One passage cited in the ruling says that "historically, Biblical passages taken out of context have been used to justify such things as slavery, the inferior status of women, and the persecution of religious minorities." Such attitudes have led some religious groups to declare "that homosexuality is immoral," the group's materials state, while others "have begun to look at sexual relationships in terms of the love, mutual support, commitments and the responsibility of the partners rather than the sex of the individuals involved."

In another section, the materials discuss specific faiths, noting which faiths recognize same-sex unions, and the conditions under which some faiths will ordain gay clergy. While the Episcopal Church is praised as "more receptive to gay worshipers than many other Christian denominations," the Church of Jesus Christ of Latter-day Saints is described as having "the most anti-gay policies of any religion widely practiced in the United States." The section on Roman Catholic belief also notes that some theologians have argued, "much to the embarrassment of the Vatican," that the medieval church recognized unions for same-sex couples.

In his ruling, Judge Forrester noted that Safe Space is not just one among many student groups, but one with close ties—financial and staffing—to the university. In this context, he said, it is irrelevant that officials involved in the program stressed that the materials in question had no religious purpose, and were simply motivated by a desire to help students understand the views of different religious groups on questions of sexuality.

Because of the close ties to the university, Judge Forrester said, the issue is the "clear preference of one religion over another contained" in the Safe Space materials, which he said was clearly unconstitutional. The decision ordered Georgia Tech to remove the materials in question.

A statement from the university said that it "disagrees" with the decision, but that it is "moot" because the materials are no longer used by the Safe Space program.

Nate Kellum, a lawyer at the Alliance Defense Fund, said the issues are not moot elsewhere. While the exact names of programs and the materials they use may vary, "these kinds of things are all over the place," he said, and other public colleges would be well advised to note this week's decision.

Even in other parts of the country, where a ruling by a single federal judge would not be binding, he said, "I think the logic and reasoning would support the idea that this practice is unconstitutional."

A professor making comments in a classroom similar to those in the Safe Space materials would not be unconstitutional, Kellum said, because such statements would not carry the same weight as coming from the institution. He added that his group was not opposed to all services public colleges offer for gay students.

"The problem with this was that the university was denigrating firmly held religious beliefs," he said. The Safe Space materials "held in high regard certain denominations that found no moral implications in homosexual relations, but denigrated those that did find moral implications."

Brian Moulton, a lawyer for the Human Rights Campaign, a national gay rights group, agreed that the Safe Space materials were problematic. He noted nothing in the decision makes it impossible for a public college to offer programs for gay students, and the only limitations concern discussion of religion. The language used in the materials about religions "did very much sound like taking sides," which is "very problematic with public funds," he said.

Others were more critical of the decision. Steve Sanders, a Chicago appellate lawyer and former public university administrator, said some of the materials at issue "might strike some readers as rather shallow and tendentious," but he added, "I think you have to squint awfully hard to conclude that, as a First Amendment matter, they either denigrate or proselytize on behalf of any particular religious perspective. While the materials may betray a certain political or cultural point of view and we can debate the extent to which universities should be in that business, I think it was something of a stretch for the court to say they amounted to government favoritism toward one set of religious beliefs at the expense of another."

Sanders also noted that "religious activist groups" like those frequently supported by the Alliance Defense Fund

"have properly sought to contribute their perspective on homosexuality to the larger market place of ideas" and these groups "understandably employ religious texts and religious concepts," when they do so. He added, "I read the Georgia Tech Safe Space materials not as a foray into theology for its own sake, but rather as an effort to engage and critique the claims made by anti-gay religious groups."

Sanders said that "some might see it as a bit hypocritical for a religiously partisan group like the Alliance Defense Fund," which says it wants to promote "robust public debate," to "show this sort of hypersensitivity and file a lawsuit when a group like Safe Space criticizes those perspectives." The suit, he added, "raises the suspicion that this isn't so much about having an open and robust debate as it is about using the tools of law to shut down the other side." Reported in: insidehighered.com, May 2.

privacy

Trenton, New Jersey

The New Jersey Supreme Court ruled April 21 that, under the New Jersey Constitution, an Internet user has the right to privacy in the subscriber information maintained by the individual's Internet service provider.

Ruling in the case of Shirley Reid, a Cape May County woman who was charged with hacking into her employer's computer system after police obtained her identity from Comcast by using a municipal court subpoena, the high court unanimously held law enforcement had the right to investigate her but should have, instead, used a grand jury subpoena. The court upheld a state appeals court ruling that overturned the conviction for second-degree computer theft.

Reid was investigated after her employer, Jersey Diesel of Lower Township, was notified by a business supplier in August 2004 that someone had accessed and changed both the company's multi-digit numbers that make up an IP address and its password and created a non-existent shipping address. When the owner, Timothy Wilson, asked Comcast for the IP address of the person who made the changes so he could identify the individual, the Internet provider declined to so without a subpoena.

Wilson suspected Reid, an employee who had been on disability leave, could have made the changes. Reid had returned to work on the day the computer changes were made, argued with Wilson and left.

The Lower Township police obtained a municipal court subpoena and served it on Comcast. Comcast then identified Reid, her address and telephone number, type of service provided, e-mail address, IP numbers, account number and method of payment. In February 2005, a Cape May grand jury returned an indictment charging Reid with computer theft. In state Superior Court in Cape May Courthouse, Reid successfully moved to have the evidence suppressed. The court identified several flaws in the subpoena process.

"The court holds that citizens have a reasonable expectation of privacy in the subscriber information they provide to Internet service providers," the Supreme Court held. "Accordingly, the motion to suppress by Reid was properly granted because the police used a deficient municipal subpoena. Law enforcement officials can obtain subscriber information by serving a grand jury subpoena on an Internet service provider without notice to the subscriber. The state (law enforcement) may seek to reacquire the information with a proper grand jury subpoena because records of the information existed independently of the faulty process used by police, and the conduct of the police did not affect the information."

Reid's attorney's have sought to establish a requirement that Internet users be informed when their identities are the subject of subpoenas so they can mount a challenge in court. Reported in: *Newark Star-Ledger*, April 21.

obscenity

Los Angeles, California

A closely watched obscenity trial in Los Angeles federal court was suspended June 11 after the judge acknowledged maintaining his own publicly accessible website featuring sexually explicit photos and videos.

Alex Kozinski, chief judge of the U.S. Court of Appeals for the Ninth Circuit, granted a 48-hour stay in the obscenity trial of a Hollywood adult filmmaker after the prosecutor requested time to explore "a potential conflict of interest concerning the court having a . . . sexually explicit website with similar material to what is on trial here."

Kozinski acknowledged posting sexual content on his website. Among the images on the site were a photo of naked women on all fours painted to look like cows and a video of a half-dressed man cavorting with a sexually aroused farm animal. He defended some of the adult content as "funny" but conceded that other postings were inappropriate.

Kozinski, 57, said that he thought the site was for his private storage and that he was not aware the images could be seen by the public, although he also said he had shared some material on the site with friends. He has since blocked public access to the site.

Kozinski is one of the nation's highest-ranking judges and has been mentioned as a possible candidate for the U.S. Supreme Court. He was named chief judge of the Ninth Circuit last year and is considered a judicial conservative on most issues. He was appointed to the federal bench by President Reagan in 1985.

After publication of an latimes.com article about his website, the judge offered another explanation for how the material might have been posted to the site. Earlier, he told the *Times* that he had a clear recollection of some

of the most objectionable material and he was responsible for placing it on the Web. But the next day, as controversy about the website spread, Kozinski was seeking to shift responsibility, at least in part, to his adult son, Yale.

"Yale called and said he's pretty sure he uploaded a bunch of it," Kozinski wrote in an e-mail to Abovethelaw.com, a legal news website. "I had no idea, but that sounds right because I sure don't remember putting some of that stuff there."

Sen. Dianne Feinstein (D-CA), a member of the Senate Judiciary Committee, expressed concern about Kozinski's website. "If this is true, this is unacceptable behavior for a federal court judge," she said in a statement.

Stephen Gillers, a New York University law professor who specializes in legal ethics and has known Kozinski for years, called him "a treasure of the federal judiciary." Gillers said he took the judge at his word that he did not know the site was publicly available. But he said Kozinski was "seriously negligent" in allowing it to be discovered. "The phrase 'sober as a judge' resonates with the American public," Gillers said. "We don't want them to reveal their private selves publicly. This is going to upset a lot of people." Gillers said the disclosure would be humiliating for Kozinski and would "harm his reputation in many quarters" but that the controversy should die there.

He added, however, that if the public concludes the website was intended for the sharing of pornographic material, "that's a transgression of another order. It would be very hard for him to come back from that," he said.

Kozinski has a reputation as a brilliant legal mind and is seen as a champion of the First Amendment right to freedom of speech and expression. Several years ago, for example, after learning that appeals court administrators had placed filters on computers that denied access to pornography and other materials, Kozinski led a successful effort to have the filters removed.

The judge said it was strictly by chance that he wound up presiding over the trial of filmmaker Ira Isaacs in U.S. District Court in Los Angeles. Appellate judges occasionally hear criminal cases when they have free time on their calendars, and the Isaacs case was one of two he was given, the judge said.

Isaacs is on trial for distributing sexual fetish videos, featuring acts of bestiality and defecation. The material is considerably more vulgar than the content posted on Kozinski's website.

The judge said he didn't think any of the material on his site would qualify as obscene. "Is it prurient? I don't know what to tell you," he said. "I think it's odd and interesting. It's part of life."

Before the site was taken down, visitors to http://alex.kozinski.com were greeted with the message: "Ain't nothin' here. Y'all best be movin' on, compadre." Only those who knew to type in the name of a subdirectory could see the content on the site, which also included some of Kozinski's essays and legal writings, as well as music files and personal photos.

The sexually explicit material on the site was extensive, including images of masturbation, public sex, and contortionist sex. There was a slide show striptease featuring a transsexual, and a folder that contained a series of photos of women's crotches in snug-fitting clothing or underwear.

Kozinski said he began saving the sexually explicit materials and other items of interest on his website years ago. "People send me stuff like this all the time," he said. In turn, he said, he occasionally passes on items he finds interesting or funny to others.

Among the sexually explicit material on his site that he defended as humorous were two photos. In one, a young man is bent over in a chair and performing fellatio on himself. In the other, two women are sitting in what appears to be a cafe with their skirts hiked up to reveal their pubic hair and genitalia. Behind them is a sign reading "Bush for President."

"That is a funny joke," Kozinski said.

The judge said he planned to delete some of the most objectionable material from his site, including the photo depicting women as cows, which he said was "degrading . . . and just gross." He also said he planned to get rid of a graphic step-by-step pictorial in which a woman is seen shaving her pubic hair.

Before suggesting that his son might have been responsible for posting some of the content, Kozinski told the *Times* that he, the judge, must have accidentally uploaded the cow and shaving images to his server while intending to upload something else. "I would not keep those files intentionally," he said. He offered to give a reporter a demonstration of how the error probably occurred. The judge emphasized that he never used appeals court computers to maintain his site.

The presence of copyrighted music files on Kozinski's site raises other issues. More than a dozen MP3 tracks were listed, and they were neither excerpts nor used to illustrate legal opinions, which experts said might have qualified their copying as "fair use." The artists included Johnny Cash, Bob Dylan and Weird Al Yankovic. Uploading such files could violate civil copyright laws if friends or members of the public visited the site and downloaded the songs, according to attorneys who have litigated file-sharing cases for both copyright holders and accused infringers.

Even if no one downloaded the songs, just making them available might run afoul of the law, said Corynne McSherry, staff attorney at the nonprofit Electronic Frontier Foundation, which often argues the other side of such

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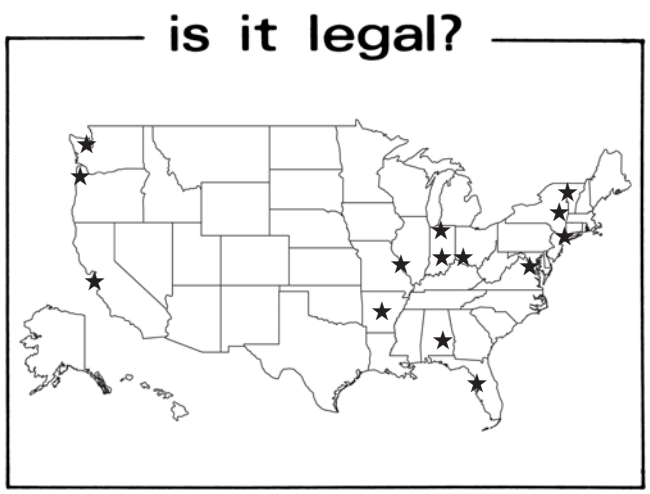

libraries

Batavia, Ohio

The Clermont County Public Library has been sued in federal court on behalf of a couple who claim they were barred from holding a free financial planning seminar at the Amelia branch because they planned to quote the Bible. "Christian organizations shouldn't be discriminated against for their beliefs," Tim Chandler, a lawyer with the Alliance Defense Fund, said in a statement about the case.

Lawyers for the defense fund, which was founded by leaders of Christian ministries, filed the suit June 4 in U.S. District Court in Cincinnati. The suit was filed on behalf of George and Cathy Vandergriff and the Institute for Principled Policy. They had requested permission to hold seminars April 18 and 19 at the library. The request was denied by Dave Mezack, interim director of the ten-branch library, the suit said.

"Refusing to grant this group permission to hold a seminar at a meeting room in a public library because they planned to quote the Bible is about as blatantly un-American and unconstitutional as you can get," Chandler said. "What's next? Will the library board attempt to keep patrons from checking out Bibles and reading them on government property?"

Discussion of the Bible is protected under the First Amendment right to free speech, the suit said. It asks that the library's rule against the use of meeting rooms for religious events be overturned, and that compensatory damages be awarded to the couple and the institute, though no amounts were cited.

"The Vandergriffs and the institute believe that the Bible is the inspired word of God and as such is the source of all wisdom and knowledge, including all wisdom and knowledge concerning financial matters," the suit said. Prohibited by the library's policy is the use of "meeting rooms for political, religious or social events," the suit said.

The village of Amelia has used the branch for meetings to discuss government issues, including financial planning, the suit said. Public meetings were held at the library April 23 and May 21 to discuss the possibility of implementing a 1 percent earnings tax in the village.

Thomas Blust, head of the civil division of the Clermont County Prosecutor's Office, said a library rule barred partisan political organizations, not governmental organizations such as a village council. Blust said the Institute for Principled Policy was founded by Barry Sheets, who he said was the director of Columbus operations for Cincinnati-based Citizens For Community Values. Reported in: *Cincinnati Enquirer*, June 7.

Burlington, Vermont

The Vermont Library Association and the Vermont School Library Association have succeeded in getting a new state law enacted to protect the confidentiality of library patrons. Previously, Vermont offered protection of library circulation records only through an exception to the open records law.

The new law, "An Act Relating to the Confidentiality of Library Patron Records," covers all types of libraries (public, academic, school, archives, and others open to the public) and affirmatively declares library patron registration and transaction records confidential. It prohibits sharing those records except (1) with the written permission of the library patron, (2) to library officers, employees, volunteers, and agents as necessary for library administration, (3) in response to an authorized judicial order or warrant, and (4) to custodial parents or guardians of a student in accordance with the federal law Family Education Rights and Privacy Act (FERPA) by the library at the school the student attends.

The law also allows any library to release information to custodial parents and guardians of patrons under age 16, a compromise provision written into the bill by a Senate committee after hearing testimony from parents, some of whom wanted the law to protect the confidentiality of all minors, and others of whom wanted full parental access to records of their children under 18.

The Vermont Library Association initiated work on this legislation more than a year ago to address widespread and longstanding confusion in the state about library records.

While the state's open records law said that library records were not public documents, it fell short of explicitly saying that they were confidential. This led to various and conflicting interpretations by state officials, law enforcement officers, librarians, and others. A 2006 survey of directors of public and academic libraries in Vermont found they received at least 1,200 requests for patron information in the year before the survey. With the new law in place, librarians and library patrons across Vermont have greater assurance that their reading habits and research interests are private matters they alone can decide to share with others. Reported in: OIF blog, June 6.

school

Land O' Lakes, Florida

The telephone call that spelled the end of Jim Piculas' career as a substitute teacher in Pasco County came on a January day about a week after he performed the disappearing-toothpick trick for a group of rapt middle school students.

Pat Sinclair, who oversees substitute teachers in the Pasco County School District, was on the phone. She told Piculas there had been a complaint about his performance at Rushe Middle School in Land O' Lakes. He asked what she meant. "She said, 'You've been accused of wizardry,'" Piculas said. Piculas said he replied, "I have no idea what you're talking about." He said the statement seemed bizarre to him, like something out of Harry Potter.

He said he also told Sinclair, "It's not black magic. It's a toothpick."

The school district puts a somewhat different spin on the disappearing-toothpick incident. Assistant Superintendent Renalia DuBose said the word "wizardry" never came up on the school district's end. "That was his rendition of what happened," she said. DuBose also said "there was a lot more involved" than a simple magic-trick demonstration.

She said the principal interviewed students after the regular teacher complained about Piculas' performance in the classroom. The principal then requested that Piculas not return to the school and said he "absolutely should not be subbing," DuBose said.

"The toothpick demonstration was minor compared to the other problems," she said.

In a letter the district sent to Piculas, performing a magic trick at Rushe Middle is just one of the reasons the district gives for dumping him from the substitute-teacher list. The others are that Piculas did not follow the lesson plans, he allowed students on computers even though another teacher said not to and he told the fifth-period student peer that she was in charge.

Piculas said those other reasons are just window dressing. He said he finished the lesson plan, another teacher knew the students were on the computers and he never put the student peer in charge.

Piculas said he thinks his troubles all come down to the disappearing-toothpick trick and a student who may have interpreted the trick as wizardry. The trick requires a toothpick and transparent tape. A sleight-of-hand maneuver causes the toothpick to disappear then reappear. At least, so it seems. In reality, the toothpick hides behind the performer's thumb, held in place by the tape.

"The whole thing lasted 45 seconds," Piculas said.

He said the students liked the trick. He showed them how to do it so they could perform it at home. One student in the Rushe Middle class apparently took the trick the wrong way, Piculas said. He said he was told the student became so traumatized that the student's father complained.

Sinclair wrote Piculas a letter, dated January 28, to say the district would "no longer be using your services." The letter mentioned magic tricks at the end of the list of other classroom offenses he is accused of committing. The word "wizardry" does not appear in the letter.

"I think she was trying to downplay it because it sounded so goofy," Piculas said.

Piculas had worked as a substitute teacher for eight or nine months, spending time at fifteen schools. He said he also was working toward teacher certification with the dream of being hired full time. That appears unlikely now. Piculas said he applied for a job as a GED instructor but wasn't allowed to interview. "My whole career is in limbo," he said. Reported in: TampaBayOnline, May 6.

Internet

Washington, D.C.

Children's advocates have asked the Federal Trade Commission not to allow marketers to collect information online from children under 18 years old. That came in comments on the FTC's proposed self-regulatory guidelines for so-called behavioral marketing. As the traditional ad becomes more nontraditional, media companies are increasingly looking to the Web to embed and target their pitches, based on the likes and dislikes of their audience.

The five principles proposed by FTC staffers included reasonable disclosure and security; limits on how long the information can be retained and what it can be used for; and a requirement that any information deemed "sensitive" only be collected with the permission of the user.

In its comments, the Center for Digital Democracy, joined by the American Academy of Pediatrics and veteran children's media activists Children Now and the United Church of Christ, told the FTC in comments April 11 they were generally supportive of the principles, with the caveat that children's information be found to be de facto "sensitive" and further that marketers be prohibited entirely from collecting that information from kids.

They argued kids are more susceptible to such ads, are

less able to distinguish between ads and other information and kids do not "meaningfully" consent to such advertising and can't be expected to figure out privacy policies that are hard enough for adults to understand.

The groups want the FTC to adopt the guidelines with the "sensitive data" exclusion for kids under 18; monitor industry compliance and put more teeth in the exclusion, if needed; and require express consent from parents when advertisers collect any information from kids in order to target them with advertising.

The Center for Digital Democracy, headed by Jeff Chester, has been a lead group in pushing the FTC to take a hard and critical look at behavioral marketing as more old-line media companies get into the new online space. He argued that it could well be the next media-consolidation battleground.

"This filing is to help the FTC recognize that they must ensure that children's and adolescents' privacy is protected in the age of Facebook and MySpace," Chester said. "The commission still has a late-1990s understanding of online marketing. Children and teens in the United States have been left vulnerable to manipulation because of the failure of the FTC to act in a meaningful way."

House Telecommunications and Internet Subcommittee Chairman Ed Markey (D-MA) agreed that the FTC needed to make its presence felt. "The FTC has appropriately recognized the pressing need for updated online privacy protections for children that reflect the sophisticated data collection and behavioral targeting practices now used widely across the Internet," Markey said Friday in a statement on the proposed guidelines. "Without stronger protections, including a prohibition on collecting data on children's and teens' online activities, young Internet users may become unwitting targets of the 'hidden persuaders' of the digital age." He promised to keep an eye on the proceedings. "I look forward to monitoring the FTC's work in this important area," he said. Reported in: *Broadcasting and Cable*, April 11.

Washington, D.C.

An Illinois Congressman wants to ban the online activity Second Life in school and libraries.

U.S. Rep. Mark Kirk said Second Life and social networking sites like MySpace and Facebook have grown increasingly popular, attracting both children and online predators.

"According to a U.S. Department of Justice survey, one-in-five kids have been sexually solicited online," Kirk explained in a news announcement. "As new technologies develop, more disturbing revelations unfold. Sites like Second Life offer no protections to keep kids from virtual 'rape rooms,' brothels and drug stores. If sites like Second Life won't protect kids from obviously inappropriate content, the Congress will."

Kirk is focusing on Second Life as he attempts to gain support for the stalled "Deleting Online Predators Act." He criticized Linden Labs for failing to use an age verification features in its registration process.

Second Life issued a statement saying it takes steps to prevent children from accessing adult locations in the virtual world but the process isn't perfect.

Kirk held a press conference on the issue and sent a letter to the Federal Trade Commission requesting a consumer alert. He said teens in Second Life are engaging in prostitution, drug use, and other inappropriate behaviors. "Drug dealers and predators routinely attempt to contact users in the real world once a meeting happens in Second Life," he said.

He introduced the DOPA bill in 2006 to prevent children from accessing social networking sites and chat rooms unless they do so for "legitimate educational purpose" under adult supervision. It would also require the FTC and the Federal Communications Commission to warn consumers about Internet dangers and review social networking sites. It passed the House by a 410–15 vote but died in the Senate. It now has 91 co-sponsors.

Although MySpace has taken several steps to increase security for youth and improve filters that weed out sex offenders, Kirk took aim at that social networking site as well. He said children's detailed personal information can easily be accessed on the site. People under 13 are prohibited from joining the site. People ages 14 and 15 have secure profiles, which prevent adults from viewing personal details and befriending them unless they already have access to the teen users' full names and e-mail addresses. Reported in: *Information Week*, May 7.

Albany, New York

Verizon, Sprint and Time Warner Cable have agreed to block access to Internet bulletin boards and websites nationwide that disseminate child pornography. The move is part of a groundbreaking agreement with the New York attorney general, Andrew M. Cuomo, that was announced June 10 as a significant step by leading companies to curtail access to child pornography. Many in the industry have previously resisted similar efforts, saying they could not be responsible for content online, given the decentralized and largely unmonitored nature of the Internet.

The agreements will affect customers not just in New York but throughout the country. Verizon and Time Warner Cable are two of the nation's five largest service providers, with roughly 16 million customers between them. Negotiations are continuing with other service providers, Cuomo said.

The companies agreed to shut down access to newsgroups that traffic in pornographic images of children on one of the oldest outposts of the Internet, known as Usenet. Usenet began nearly thirty years ago and was one of the

earliest ways to swap information online, but as the Internet blossomed, Usenet was largely supplanted by it, becoming a favored back alley for those who traffic in illicit material. The providers also will cut off access to websites that traffic in child pornography.

While officials from the attorney general's office said they hoped to make it extremely difficult to find or disseminate the material online, they acknowledged that they could not eliminate access entirely. Among the potential obstacles: some third-party companies sell paid subscriptions, allowing customers to access newsgroups privately, preventing even their Internet service providers from tracking their activity.

The agreements resulted from an eight-month investigation and sting operation in which undercover agents from Cuomo's office, posing as subscribers, complained to Internet providers that they were allowing child pornography to proliferate online, despite customer service agreements that discouraged such activity. Verizon, for example, warns its users that they risk losing their service if they transmit or disseminate sexually exploitative images of children.

After the companies ignored the investigators' complaints, the attorney general's office surfaced, threatening charges of fraud and deceptive business practices. The companies agreed to cooperate and began weeks of negotiations.

By pursuing Internet service providers, Cuomo is trying to move beyond the traditional law enforcement strategy of targeting those who produce child pornography and their customers. That approach has had limited effectiveness, according to Cuomo's office, in part because much of the demand in the United States has been fed by child pornography from abroad, especially Eastern Europe.

"You can't help but look at this material and not be disturbed," said Cuomo, who promised to take up the issue during his 2006 campaign. "These are 4-year-olds, 5-year-olds, assault victims, there are animals in the pictures," he added. "To say 'graphic' and 'egregious' doesn't capture it."

"The ISPs' point had been, 'We're not responsible, these are individuals communicating with individuals, we're not responsible,'" he said, referring to Internet service providers. "Our point was that at some point, you do bear responsibility."

Internet service providers represent a relatively new front in the battle against child pornography, one spearheaded in large part by the National Center for Missing and Exploited Children. Federal law requires service providers to report child pornography to the National Center, but it often takes customer complaints to trigger a report, and few visitors to illicit newsgroups could be expected to complain because many are pedophiles themselves.

Last year, a bill sponsored by Congressman Nick Lampson, a Texas Democrat, promised to take "the battle of child pornography to Internet service providers" by ratcheting up penalties for failing to report complaints of child pornography. The bill passed in the House, but has languished in the Senate.

"If we can encourage—and certainly a fine would be an encouragement—the ISP to be in a position to give the information to law enforcement, we are encouraging them to be on the side of law enforcement rather than erring to make money for themselves," Lampson said.

The National Center for Missing and Exploited Children collaborated on Lampson's bill and with Cuomo's office in its investigation and strategy. "This is a major step forward in the fight against child pornography," Ernie Allen, the president and chief executive officer of the center, said in a statement. "Attorney General Cuomo has developed a new and effective system that cuts online child porn off at the source, and stops it from spreading across the Internet."

As part of the agreements, the three companies will also collectively pay $1.125 million to underwrite efforts by Cuomo's office and the center for missing children to purge child pornography from the Internet.

One considerable tool that has been assembled as part of the investigation is a library of more than 11,000 pornographic images. Because the same images are often distributed around the Web or from newsgroup to newsgroup, once investigators catalog an image, they can use a digital identifier called a "hash value" to scan for it anywhere else—using it as a homing beacon of sorts to find other pornographic sites.

"It's going to make a significant difference," Cuomo said. "It's like the issue of drugs. You can attack the users or the suppliers. This is turning off the faucet. Does it solve the problem? No. But is it a major step forward? Yes. And it's ongoing."

The most graphic material was typically found on newsgroups, the online bulletin boards that exist apart from the World Wide Web but can be reached through some Internet search engines. The newsgroups transmit copies of messages around the world, so an image posted to the server of a service provider in the Netherlands, for example, ends up on other servers in the United States and elsewhere.

The agreement is designed to bar access to websites that feature child pornography by requiring service providers to check against a registry of explicit sites maintained by the Center for Missing and Exploited Children. Investigators said a few providers, including America Online, had taken significant steps on their own to address some of the problems their competitors were being forced to tackle.

Cuomo said his latest investigation was built on agreements he and other state attorneys general had reached with the social networking sites Facebook and MySpace to protect children from sexual predators.

"No one is saying you're supposed to be the policemen on the Internet, but there has to be a paradigm where you cooperate with law enforcement, or if you have notice of a potentially criminal act, we deem you responsible to an

extent," he said. "This literally threatens our children, and there can be no higher priority than keeping our children safe." Reported in: *New York Times*, June 10.

colleges and universities

Little Rock, Arkansas

On bad days, there are no doubt plenty of professors who have joked about suing students. But it is pretty rare that somebody actually does so. A law professor at the University of Arkansas at Little Rock has—and the ramifications could extend well beyond his dispute.

Richard J. Peltz is suing two students who are involved in the university's chapter of the Black Law Student Association, the association itself, and another individual who is affiliated with a black lawyers' group. Peltz charges them with defamation, saying his comments about affirmative action were used unfairly to accuse him of racism in a way that tarnished his reputation.

Suing students for what they have said about you is rare if not unheard of, but the topic has suddenly come up not only at Little Rock's law school, but at Dartmouth College. There, a former instructor recently sent several former students e-mail indicating she was planning a suit. Robert B. Donin, general counsel of the college, issued a statement in which he said: "We have determined that there is no basis for such action, and we have advised the students and faculty members of this."

Since the suit that has been filed in Arkansas has been reported by the *Arkansas Democrat Gazette*, students and faculty there have considered the ramifications—but mostly among themselves. There is considerable concern at the university—and some elsewhere—about what it means to open exchange of ideas to have a professor sue his students.

The dispute over Peltz concerns his opposition to affirmative action—and how he expressed it. Complicating matters is that no one who was present when the statements were actually made is discussing them. Those Peltz sued did not respond to messages, and he was willing to e-mail only a very general discussion of what happened. In examples of the defamatory material that were submitted with his suit, however, the view of the black student organization about his actions becomes clear.

In a memo sent to Charles Goldner, dean of the law school, the students accuse Peltz of engaging in a "rant" about affirmative action, of saying that affirmative action helps "unqualified black people," of displaying a satirical article from *The Onion* about the death of Rosa Parks, of

allowing a student to give "incorrect facts" about a key affirmative action case, of passing out a form on which he asked for students' name and race and linking this form to grades, and of denigrating black students in a debate about affirmative action, among other charges.

The student memo said the organization had "no problem with the difference of opinion about affirmative action," but Peltz's actions were "hateful and inciting speech" and were used "to attack and demean the black students in class."

The black student group demanded that Peltz be "openly reprimanded," that he be barred from teaching constitutional law "or any other required course where black students would be forced to have him as a professor," that the university mention in his personnel file he is unable "to deal fairly with black students," and that he be required to attend diversity training.

While Peltz in an e-mail said he could not discuss the case in detail, he suggested—as have his supporters—that the accusations he was unfair to black students were a misrepresentation of his criticism of affirmative action. For example, he said he was invited by the Black Law Students Association to debate affirmative action and to take the anti- position.

While not relating this action directly to what is described in the suit, he wrote the following by e-mail about what may be the form asking for students' race. "Unrelated to the debate and in the ordinary course of my Constitutional Law class in the fall of 2005, I taught the usual and scheduled material on affirmative action. To stimulate discussion, I presented students with an exercise by handing out an adapted version of the form that the Arkansas state government uses to hire personnel. All students were offered credit to participate. Responding to skeptical student questions, I argued in favor of affirmative action. My teaching method spurred a productive class discussion."

After Peltz filed the suit, he was removed from teaching all required courses—a fact the university confirmed but declined to explain, saying it related both to personnel issues and litigation. Goldner, the dean, sent students and professors an e-mail in which he said that "we recognize that an individual is within his or her rights to file claims in our courts. We also take seriously our obligation to provide our students the environment they need in order to receive the best possible education. Part of that obligation includes working to be an institution in which all members—faculty, students, and staff—are free to openly voice opinions and concerns."

Goldner pledged to continue to work to create a "diverse and inclusive community."

Jonathan Knight, who handles academic freedom and governance issues for the American Association of University Professors, said he was concerned about the suit—regardless of whether Peltz was unfairly maligned by his students. "A suit like this, as I'm sure the professor knows, can have troubling implications for academic freedom," Knight said. "When you ask a court to become involved in making judgments about the metes and bounds of free expression on campus, it can be dangerous." He noted, for example, that legal standards about the free exchange of ideas—some of them unpleasant—"are not co-equal with the standards of the academic community."

Generally, Knight said the worries about courts settling such matters are such that professors need to be "thickly armored" when it comes to comments from colleagues or students. If a professor is being unfairly criticized, it is far better for fellow faculty members or a dean to come to his or her defense than for the scholar to go to court, Knight said.

Noting that professors "typically do not restrain themselves" when talking about other professors' research, Knight said that "when one enters the academic community, it's with the understanding that lots of things might well be said which cast one in a very unpleasant light." Reported in: insidehighered.com, April 30.

Stanford, California

An exhibit on the Israeli-Palestinian conflict, created by a student group with a vested interest in one side of the issue, is bound to court controversy one way or another. At Stanford University, it came down to a question of labels and locations.

It started when the group, Students Confronting Apartheid in Israel, sponsored an exhibit of photographs to be displayed at Old Union, a common area on campus. Typical procedure requires the director of student unions to approve a project beforehand. "She reviews all details in person and clarifies the student's proposal as well as expectations from her perspective," said Greg Boardman, Stanford's vice provost for student affairs.

The exhibit went up as planned, but with the addition of captions and a new title, "Life Under Israeli Apartheid," that were not part of the project as approved. Due to a series of misunderstandings and a name change, the students apparently didn't realize that even the accompanying text needed to be vetted. When Old Union staff started receiving numerous complaints last month, over statistics describing the conflict, the exhibit was removed until students and administrators could strike a deal.

They reached a compromise that allowed half of the exhibit—ten photos—to be displayed again in Old Union's lobby, without the captions in question, while the other half will be shown with captions in a meeting room removed from common areas. The display now has its original title as proposed to the administration: "Hope Under Siege."

After the exhibit was removed, the group was given the choice of displaying the photos—with the captions—in an outdoor location, White Plaza, Boardman said. "They were not interested in having the photo exhibit viewed" there, he said.

While the photographs were back up and tensions seemed to have eased, the flare-up revealed sensitivities

over which parts of campus are fair game for provocative displays, sometimes with overt or covert political messages. At the same time—beyond the procedural questions of what kind of approval is required before such exhibits can be shown—students have debated whether the meanings of the photographs can change based solely on the attached text.

Photographers and filmmakers, from Errol Morris on down, have argued that photographs can exist only in context and that text is a vital tool for grounding images in a great social or political reality. According to students quoted in *The Stanford Daily*, the captions consisted of statistics gleaned from human rights organizations such as Amnesty International and the United Nations.

There's also the question of location. At Stanford, a private university that tends to encourage student expression and protest activity on certain areas of campus, common areas and student unions aren't necessarily typical venues for images and words that might make some students feel uncomfortable. "We wanted to maintain the comfortable and welcoming environment in the first floor common lounge area while providing an interim solution to the students' request for exhibit space," said Chris Griffith, associate vice provost for student affairs, in the *Stanford Daily* article. "I think we've achieved that."

Old Union reopened last fall after a year of renovations. Stanford is in the process of assembling a new committee, made up of students and staff, to "help establish consistent policies and procedures to govern the use of communal space in Old Union," Boardman said. "We also intend to seek broader student input to ensure that the common space is welcoming and comfortable for all students and that it provides opportunities for a variety of student events and activities." Reported in: insidehighered.com, May 23.

Indianapolis, Indiana

Administrators at Indiana University–Purdue University Indianapolis (IUPUI) have revoked their finding that a student-employee was guilty of racial harassment merely for publicly reading the book *Notre Dame vs. the Klan: How the Fighting Irish Defeated the Ku Klux Klan*. Following pressure from the Foundation for Individual Rights in Education (FIRE), IUPUI has declared that Sampson's record is clear and said it will reexamine its affirmative action procedures relating to internal complaints.

"Just when you'd thought you'd seen every crazy act of censorship a college administrator can dream up, along comes a case where a student is found guilty of racial harassment simply for reading a book," FIRE President Greg Lukianoff said. "Thankfully, with time and public outrage, IUPUI's administration recognized Keith John Sampson had done nothing wrong and acknowledged that the First Amendment protects not only what you say, but also what you read."

In November 2007, Sampson—who works in the school's janitorial department and is ten credits away from a degree in communications—was notified by Lillian Charleston of IUPUI's Affirmative Action Office (AAO) that two co-workers had filed a racial harassment complaint against him. The AAO alleged that by reading a book on the KKK in the break room, Sampson had engaged in racial harassment.

Sampson attempted to explain that the book, written by Todd Tucker, was a historical account of the events on two days in May 1924, when a group of Notre Dame students fought with members of the Ku Klux Klan. His explanation was dismissed, and he later received a letter from Charleston that determined he was guilty of racial harassment. Charleston wrote that his failures included "openly reading the book related to a historically and racially abhorrent subject."

Sampson contacted the American Civil Liberties Union of Indiana, which wrote to IUPUI's counsel several times demanding that the letter be removed from his file. It was not until February 7, 2008, that IUPUI responded to Sampson, with a letter from Charleston which stated, "if the conduct was intended to cause disruption to the work environment, such behavior would be subject to action by the University," but "because I cannot draw any final conclu-

sion in this instance, no such adverse disciplinary action has been or will be taken in connection with the circumstances at hand."

Since this letter neither reversed the guilty finding nor apologized for the damage to Sampson's reputation, FIRE wrote to IUPUI Chancellor Charles R. Bantz in March for clarification. FIRE demanded that all documents regarding the guilty finding be expunged from Sampson's record, that IUPUI apologize for its handling of the incident, and that the school clarify and confirm its understanding of harassment law.

FIRE finally received a letter—six months after Sampson's ordeal began—from Bantz, stating that IUPUI "regret[s] this situation took place" and is committed to upholding freedom of expression on its campus.

The letter also confirmed that no documents regarding the incident are in Sampson's file and that IUPUI hopes "this experience as well as feedback from the campus community will result in an improved [complaint] process."

"After six months of uncertainly, Sampson finally can be sure that he is in the clear," Lukianoff said. "We applaud higher-level administrators at IUPUI for taking this case so seriously and promising to reform, and we suggest to the lower-level administrators at IUPUI to remember the old adage, 'never judge a book by its cover.'" Reported in: fire .org, May 1.

St. Louis, Missouri

Many faculty members and students at Washington University in St. Louis turned their backs May 16 when Phyllis Schlafly received an honorary doctorate. They and many others were furious that the university honored a woman who has spent her career crusading against protections for women as well as for promoting the teaching of disproved theories that attack evolutionary science.

The university largely framed the issue as one of free speech and the free exchange of ideas. Statements from the university noted that many degrees have gone to people who have been "part of the broad public discourse on vital issues of our times—whether or not the majority of those within its community agree with the views expressed." Further, they have noted the wide range of views of past degree recipients. In another statement, the university noted that it was honoring Schlafly because she has had "a broad impact on American life" and the resulting controversy over her views "in many cases have helped people better formulate and articulate their own views about the values they hold."

As critics pointed out, one could be a pretty terrible person and meet those criteria. But in short, the university is wrapping the decision to honor Schlafly around the principles of the free exchange of ideas on college campuses. Just as professors or campus speakers wouldn't be denied platforms for having views that offend some people, the university has argued, honorary doctorates should go to a wide range of individuals. Or should they?

Most of those who protested the Schlafly degree said they would not object to her giving a lecture on the campus. Some might picket outside, but they would never challenge the right of a controversial figure to express her ideas, they say. An honorary doctorate is different from a lecture, they argue, because it is an honor, because it takes place at graduation, and because a doctorate—as the highest degree a university can award—conveys a sense of institutional endorsement.

The debate raised anew a question that is centuries old: should universities award degrees that haven't been earned? And are there circumstances under which some people should not be receiving such an honor?

The views of those who monitor freedom of expression in higher education may surprise some. The Foundation for Individual Rights in Education has defended the speech rights of many in campus disputes, including a number of individuals from the right. But Greg Lukianoff, president of FIRE, said Washington University would not be violating principles of academic freedom if it uninvited Schlafly and Northwestern University did not do so when it rescinded in May an invitation for Rev. Jeremiah Wright, the former pastor to Sen. Barack Obama, to receive an honorary degree.

"At a university, the idea is that you let different ideas fight it out in the market place of ideas," Lukianoff said, and that's why FIRE would defend the right of Schlafly to speak on campus. But "granting an honorary degree fits into the same category of any other award and awards are inherently subjective," he said. If a university, having extended an invitation for an honorary degree, decides that "on second thought, that's not the best idea," that's the university's right, Lukianoff said.

"It's very different from censorship," he said. Schlafly and others have a right to a platform to speak when they want to give talks on a campus that opens itself up for such events. "No one has a right to an honorary degree," he said.

The blog Free Exchange on Campus—not known for getting many links from the Eagle Forum—suggested that the Schlafly honor and resulting protests may be good for all involved. "There are some who feel that such controversial characters on the dais or behind the podium at commencement ceremonies are a distraction to the celebration of the achievements of recently-minted graduates," said a blog post. "While there's certainly a case to be made that this sort of sideshow detracts from the main event, it's more important to note that the decision to honor Ms. Schlafly has touched off the sort of vigorous debate that is part and parcel of the college experience. Members of the campus community have used this opportunity to have a spirited engagement about Schlafly's views and actions as a public figure. And that is unequivocally a good thing. Washington University should be free to award honorary degrees to whomever it chooses—even if some doubt that a recipient's

achievements merit such an award. Likewise, students, faculty members, and others are free to disagree with those choices and to vigorously express that disagreement. So long as all sides are able to make their points heard on the issue, the experience will be a net positive."

Robert M. O'Neil is a First Amendment advocate who is a former president of the University of Virginia and the University of Wisconsin System and directs the Thomas Jefferson Center for the Protection of Free Expression. Generally, he said it would raise free speech concerns to rescind an invitation for an honorary degree based on the views of the prospective honoree. At the same time, he said there are some questions to be considered that may vary at different institutions.

The first question is "how does the university describe the award?" Washington University is stressing that the person had an impact—positive or negative. But others use different criteria, which may point to flaws in some selections. The University of Cambridge has been awarding such degrees for 500 years, and used them early on to win favor from royalty. Its standards require "conspicuous merit" by the recipient. O'Neil has an honorary degree from Indiana University at Bloomington, where he was formerly a vice president, and which awards degrees to people with a connection to the university and the state. If a university with such a policy awarded a degree to someone without any Hoosier connections, that might raise issues. "You have to look at what they are saying about the honor," O'Neil said.

The second question to ask, O'Neil said, is about harm to those receiving degrees: "In what sense are the interests of those who object to Phyllis Schlafly affected by the award of the degree?" On this question, he said, "it doesn't seem to me that their degrees or the conferral of them are demeaned or undermined or deleted by the fact that that she is receiving one."

The various objections being raised, O'Neil said, would have been more appropriately considered during the process of selecting the honorees. That points to another concern raised by critics at Washington University. Although the award to Schlafly shocked the campus, administrators have stressed the committee that works with the trustees on selections had student and faculty members. The problem is that some of those involved are saying that they didn't really have the opportunity to object.

A letter from students on the committee, posted on an alumni website, states that while the students "accept partial responsibility" for the invitation, Schlafly was invited without a discussion of her controversial views, students were forced to vote up or down on an entire slate (and couldn't single out objections to Schlafly), and one student who tried to object experienced "hostile opposition."

Washington University is of course not the only institution to be criticized over honorary degree selections or embarrassed by the choices. The University of Massachusetts at Amherst revoked a degree given Robert Mugabe, president of Zimbabwe, before he became known as a despot. Many universities routinely award one or more degrees to those who have given major gifts or have the potential to do so—and some of these individuals take their doctorates to prison. Dennis Kozlowski received an honorary doctorate from the University of New Hampshire in 2000, before he was convicted of stealing hundreds of millions of dollars from Tyco, the company he led.

There are debates every year about the appropriateness of awarding doctorates to celebrities—with at least some of the debate seeming to depend on how A-list the celebrities are. So when Middlebury College awarded an honorary doctorate to Meryl Streep, there were no complaints. But Tony Danza's honorary doctorate, from the University of Dubuque, did result in some snickers.

Many in academe believe that honorary doctorates—including awards to those of decidedly non-academic backgrounds—are just an inevitable part of commencement season. They aren't—although institutions without them face their own challenges.

Most years at the University of Chicago, honorary degrees go only to scholars—nominated by Chicago professors. The only exceptions are presidents and board chairs of the university. An in-house article at Chicago in 2000 boasted of the approach: "Chicago's approach to awarding honorary degrees is unlike its peer institutions' degree-granting process, in that the university does not honor actors, ambassadors, presidents or monarchs unless they meet stringent requirements for scholarship."

The University of Texas at Austin doesn't generally award any honorary degrees and the only exceptions since 1935 have been for sitting presidents, vice presidents or first ladies of the United States. The select members of the group are: President George H. W. Bush (1990), President Lyndon Baines Johnson and Lady Bird Johnson (both 1964) and Vice President John Nance Garner (1935). So despite Garner's famous quotation about the low value of the vice presidency, he did get something of value—a UT degree—out of it.

Rice University has a strict policy against awarding honorary degrees. When Rice approached Bill Cosby about serving as commencement speaker in 2001, he was disinclined, citing the lack of a degree to go with the speech. Cosby appeared the next year, and the university gave him—in lieu of a degree—a special award to honor his service to education.

The founder of the Massachusetts Institute of Technology, William Barton Rogers, called the awarding of honorary degrees "literary almsgiving . . . of spurious merit and noisy popularity." So from MIT's founding it has not awarded honorary degrees. Rogers picked up his distaste for honorary degrees at the University of Virginia, where he was a geologist before moving to MIT. Thomas Jefferson disliked the practice, and that has settled the matter ever since.

Cornell University is another institution in the small

group to avoid honorary degrees. This academic year, officials at Cornell's medical college proposed the policy be changed so it could award honorary degrees, but the university's Faculty Senate nixed the idea. Charles Walcott, dean of the faculty at Cornell, said that "the main reason given for opposition was that it had been a source of pride that Cornell does not give honorary degrees." Reported in: insidehighered.com, May 16.

New York, New York

When reports surfaced of an unusual arrangement at Hunter College—in which corporate interests sponsored a course and helped students set up a fake website to advance the business goal of discouraging counterfeit goods—college officials dismissed the concerns. They declined to discuss details, but said the course was not problematic.

Now a special faculty committee that investigated the matter has issued a report finding multiple violations of academic freedom of the professor assigned to the course and to his students. Further, the report found that the "episode raises concerns about the ethics of pedagogy in higher education today—concerns that deserve discussion by the college community. Sponsored courses seem not to violate academic freedom in their own right, but invite manipulations of the usual principles of classroom discussion. More discomfiting, the course in question . . . made use of Hunter students to advance corporate interests, and created a false ad campaign that deceived Hunter students (who were not in the class). The nature of the course allowed for a casual approach to the dignity of students and relied on deception to achieve some of its aims—which were, we emphasize, as much corporate as pedagogical."

A spokeswoman for Hunter, asked for the administration's response to the report, said because the report was leaked, and those named in it have yet to formally respond, the administration would say nothing, "in the interest of fairness."

The course at Hunter, part of the City University of New York, was sponsored by the International Anticounterfeiting Coalition (known as the IACC), an organization of companies that are concerned about low-cost knockoffs of their products. The companies involved include some of the biggest names in fashion and consumer goods—Abercrombie & Fitch, Chanel, Coach, Harley-Davidson, Levi Strauss, Reebok and so forth. The faculty panel found Hunter agreed to let the IACC sponsor a course for which students would create a campaign against counterfeiting in which they set up a fake website to tell the story of a fictional student experiencing trauma because of fake consumer goods. One goal of the effort was to mislead students not in the course into thinking that they were reading about someone real. The course was created without any standard curricular review and the idea was to teach one side of the issue—ignoring those who believe the companies sponsoring the course take too limiting an attitude about intellectual property.

Adding to the concerns, the professor who was drafted to teach the course, Tim Portlock, not only didn't have tenure, but was outside his area of expertise. His expertise is computer art, not advertising — but he was put in charge of devising the advertising campaign on which students worked for credit.

The report found that the idea for the course originated at the senior levels of the administration and noted that Coach's CEO is a Hunter alumnus. Coach provided $10,000 to support the course and Lew Frankfort, the CEO, was subsequently given an honorary degree and made a "large donation" to the college, the report found.

The faculty panel found three areas of violations of academic freedom:

- "The most egregious aspect was that free inquiry into multiple points of view was effectively blocked despite the expressed desire of the instructor to promote such inquiry. Only a single point of view, a distinctly non-scholarly perspective that came from outside of the academy and hence not subject to the usual rigor of peer-review and other academic standards of higher education, was presented during the course."
- The "unconventional nature of the course . . . clearly invites discussion about substantive issues of pedagogy at Hunter. The choice of an untenured faculty member whose expertise falls well outside of the scope of the IACC course material predisposed a situation which made it difficult for the instructor to exercise his academic freedom rights, both in his ability to refuse to teach the class beforehand, and in his ability to control the subject matter presented while the course was running."
- "Content of courses at Hunter is reserved to individual faculty, and the faculty collectively through the Hunter College Senate. There was unwarranted involvement in the course from parts of the administration that are not charged with curricular substance, i.e., the Office of the President and the Office of Student Affairs. This blurring of the definitions of shared governance specifically contributed to the academic freedom concerns articulated above." Reported in: insidehighered.com, May 13.

Olympia, Washington

A sit-in by a student group at Evergreen State College was in its second week in early June, with students and administrators at odds over the group's suspension and whether the college violated the students' free speech.

The Evergreen chapter of Students for a Democratic

(continued on page 167)

libraries

San Francisco, California

Brewster Kahle, who runs an online library in San Francisco, was appalled when his volunteer lawyers told him in November that the FBI was demanding records of all communications with one of his patrons as part of an investigation of "international terrorism or clandestine intelligence activities."

The FBI document, called a national security letter, told Kahle he could be prosecuted if he discussed the subject with anyone but his lawyers, and allowed him to speak with his attorneys only in person. Kahle said his Internet Archive, which has 500,000 card-holders, doesn't even keep the records the FBI was seeking.

He was allowed to speak publicly May 7 under a rare settlement in which the FBI agreed to withdraw its letter and lift the gag order. That should show other librarians, and members of the public who receive any of the nearly 50,000 national security letters the government issues each year, that "you can push back on these," Kahle said.

National security letters are subpoenas issued by federal agencies to require businesses and other institutions to produce records of their customers. The agencies do not need court approval for the letters. A 1986 law initially authorized their use against suspected spies, but the USA PATRIOT Act, passed after the terrorist attacks of September 11, 2001, allowed agents to seek records of anyone connected to a foreign terrorism or espionage investigation, even if the target is not a suspect.

The Bush administration has increasingly used the letters to sidestep a 1978 law requiring federal agents to get a warrant from a special court, in a secret session, to obtain similar records. A law passed in 2006 bars agents from issuing national security letters to libraries, with some exceptions, and requires regular audits by the Justice Department's inspector general, who has found thousands of cases of misuse of the letters.

A federal judge in New York ruled national security letters unconstitutional in September, saying the gag order violated free speech and interfered with judicial authority. The government has appealed.

Kahle's case is one of only two other instances in which a national security letter has been challenged, his lawyers said. "National security letters allow the FBI to demand extremely sensitive personal information about innocent people, in total secrecy and without meaningful judicial review," said American Civil Liberties Union attorney Melissa Goodman. "The big question is, how many other improper (letters) have been issued by the FBI and never challenged?" said attorney Marcia Hofmann of the Electronic Frontier Foundation.

FBI spokesman John Miller issued a statement describing national security letters as "indispensable tools" that enable the agency to "gather the basic building blocks for our counterterrorism and counterintelligence investigations." He did not say why the FBI sent one of the letters to the Internet Archive or why it was withdrawn.

The archive, established in 1996 and based at the Presidio, allows users to browse through electronic versions of 200,000 books and 85 billion webpages. It includes a "Wayback Machine" that offers access to archived versions of websites—a feature that federal prosecutors have often used with no restrictions from the library, Kahle said. Users can browse anonymously, and must register and provide e-mail addresses only if they want to add information or comment in a message board.

So when the FBI demanded the name, address and records of all transactions with a specific patron—whose identity is blacked out in the newly unsealed legal documents—Kahle's lawyers replied by furnishing information already posted on the archive's website, and said they were withholding only a few items that were not already public. They declined to describe those items.

They also sued in federal court, arguing that national security letters are unconstitutional for the reasons cited by the New York judge, and the Internet Archive is exempt because California classifies it as a library. The lawyers said they negotiated for four months before the FBI agreed to back off.

Kahle said the settlement is a victory, but not a happy occasion. Although his lawyers worked for free, he said, the fact they had to invest tens of thousands of dollars' worth of their time "just so we can be a library is downright depressing." Reported in: *San Francisco Chronicle*, May 8.

Iowa City, Iowa

The Iowa state Senate voted 31–17 April 23 against an amendment to an education appropriations bill that would have prohibited libraries that receive state funds to from loaning R-rated films to children under 18. Sen. Frank Wood (D-Eldridge), an opponent of the bill, cited his local librarian's views. "Once you start restrictions, where do you stop?"

Similar rules were proposed in 2006. That bill, which never came to a vote, also required libraries receiving state funding to "eliminate access to pornography on the public library's computer equipment." Reported in: *American Libraries* Online, April 25.

Dublin, Ohio

The Dublin Board of Education was unanimous in its support of a decision by a district committee and Superintendent David Axner not to remove a book from the Eli Pinney Elementary library after a parent challenged its appropriateness for younger children.

And Tango Makes Three is an award-winning children's book that is based on a true situation at the Central Park Zoo in Manhattan. In the book, two male penguins share a nest and are given an egg to raise as their own by the zoo's keeper.

The parent, Christopher Barr Hill, wrote in his challenge letter that the book was not appropriate for young children. The book, he wrote, "is based on one of those subjects that is best left to be discovered by students at another time or in another place."

Board member Stu Harris researched the board's options based on a 1982 United States Supreme Court decision that set down the basic guidelines for determining when books may be removed from school libraries as a result of their content. "I think any decision other than affirming the superintendent's decision could possibly be a violation of the First Amendment," he told his fellow board members.

It comes down to a conflict between a student's right to read a book and the board's right to control what they read, Harris said. If the book was not yet in the library, the board has more leeway whether or not it belonged there. But, because it is already there "the First Amendment is very strong in what the board can do."

"We appreciate the concern raised by the parent in this case," Axner said. "The district is complying with applicable laws by allowing the book to remain in the library." Reported in: *ThisWeek Community News*, April 24.

Menasha, Wisconsin

A profanity-laced book documenting hip-hop culture will remain in the limited access area of the Maplewood Middle School Library.

That was the decision reached by the Menasha Board of Education, which met in special session May 22 to consider the request of parent Guy Hegg, who for the second time in thirty days filed objections to school library materials.

In addition to retaining the book, board members voted unanimously to adopt procedures intended to secure and record parental consent before limited access books are released to students. The procedures will require parents to sign a consent form and call the librarian to confirm their authorization. The signed forms also will be kept on file by the school.

As approved, the procedures will apply only to the ten books in limited access, one of which is *Bling, Bling: Hip Hop's Crown Jewels*, a nonfiction account of the hip-hop culture Hegg wanted removed from the library.

"One page was enough for me," Hegg told the board in his complaint. "That was all I could stomach." Hegg previously objected to the book *Angus, Thongs and Full-Frontal Snogging*, a coming-of-age novel by Louise Rennison, which had sexual content Hegg also found offensive.

In contrast to the Rennison novel, *Bling, Bling*, by Minya Oh, contains photographs and interviews with rap artists, and focuses on how the hip-hop taste for flashy jewelry typifies their musical and cultural evolution of the last 25 years.

About a dozen individuals from Menasha and surrounding communities attended the special meeting. A majority voiced their support for removing the book. "If you fill their minds with these kinds of words it will come out their mouths," said Mary VandeYacht of Menasha. "What is this saying about us as adults?"

In spite of its profanity, Maplewood's library media specialist Nancy Theiler spoke in favor of retaining the book, noting that racial and cultural diversity only can be honored by having divergent perspectives and teaching students how to make choices. "Intellectual freedom and the right to choose what to read are important rights to uphold," she said.

Theiler purchased the book based its potential appeal to reluctant readers, placing it in the library's limited access area after assessing its content. Theiler was one of five members who served on the Menasha Instructional Resource Review Committee who denied Hegg's initial request on April 28. Hegg's subsequent appeal to the board resulted in their decision to adopt formal procedures controlling access to a limited number of books in the library's collection.

"This saves our constitutional freedoms, which we all hold very sacred," said Sue Gielau, school board president. Reported in: *Appleton Post-Crescent*, May 23. □

(Tango . . . *from page 133)*

8. *I Know Why the Caged Bird Sings*, by Maya Angelou. Reasons: Sexually Explicit.

9. *It's Perfectly Normal*, by Robie Harris. Reasons: Sex Education, Sexually Explicit.
10. *The Perks of Being A Wallflower*, by Stephen Chbosky. Reasons: Homosexuality, Sexually Explicit, Offensive Language, Unsuited to Age Group.

Off the list this year are two books by author Toni Morrison: *The Bluest Eye* and *Beloved*, both challenged for sexual content and offensive language.

The Office for Intellectual Freedom is charged with implementing ALA policies concerning the concept of intellectual freedom as embodied in the Library Bill of Rights, the Association's basic policy on free access to libraries and library materials. The goal of the office is to educate librarians and the general public about the nature and importance of intellectual freedom in libraries. ☐

(domestic spying . . . from page 135)

statistics on court-approved FISA applications and statistics on criminal prosecution were "apples and oranges."

"There are a variety of factors that may account for the increase in court-approved FISA applications since 9/11," he said. Boyd said he could not comment on those factors, but said, "It is important to remember that surveillance under FISA is authorized by an independent court and used carefully and judiciously to protect the country from national security threats."

Certainly, the government has pursued a number of high-profile terrorism cases of late. A U.S. sailor was convicted in March of providing support to terrorists by passing classified information regarding movements of a Navy battle group to operators of an Internet site suspected of terrorist leanings.

The record in court has been somewhat mixed, however. Federal prosecutors in Miami twice have failed to secure verdicts in the cases of six men accused of plotting to destroy Chicago's Sears Tower and several FBI offices. After two mistrials, the "Liberty City Seven" case is due in court in January.

Even some former government officials concede many intelligence investigations fail to yield evidence of a serious threat to the U.S. "Most of these threats ultimately turn out to be wrong, or maybe just the investigating makes them go away," said Washington lawyer Michael Woods, former head of the FBI national security law unit. "A lot more information is going to pass through government hands, and most of that is going to be about people who turn out to be innocent or irrelevant." Reported in: *Los Angeles Times*, May 12. ☐

(senate report . . . from page 136

users in helping us enforce YouTube's standards." However, it said it had reviewed videos flagged by Lieberman's staff and removed those that "depicted gratuitous violence, advocated violence, or used hate speech." It did not remove videos that did not violate its Community Guidelines.

The Google response disagreed with Lieberman's request that all videos referring to or featuring terrorist organizations be removed, including content that is legal, nonviolent, or non-hate speech. It said, "While we respect and understand his views, YouTube encourages free speech and defends everyone's right to express unpopular points of view . . . users are always free to express their disagreement with a particular video on the site, by leaving comments or their own response video. That debate is healthy." The statement encouraged users to continue using the flagging tool in the Community Guidelines to report violent and hate-speech videos.

The committee's report concluded that, despite calls for a comprehensive approach to counterterrorism programs, "the U.S. government has not developed nor implemented a coordinated outreach and communications strategy to address the homegrown terrorism threat . . ." It asks what new laws or tactics are needed to "prevent the spread of ideology in the United States," and what a communications and outreach strategy should be.

Several members of the House and Senate have floated a legislative proposal to address concerns similar to those raised in the report. S.1959, a bill that its sponsors say is designed to study "violent radicalization" and "extremist belief systems" that can lead to homegrown terrorism, passed the House in late 2007 but has stalled in the Senate. Free speech advocates vigorously oppose the bill and say it would usher in an era of "thought crimes" and violate the First Amendment.

Advocates say that for more appropriate answers, HSGAC staff should consult the recommendations from nonprofits, which suggest that "efforts to prevent people in the United States from turning to terrorism can only succeed if we protect the free speech, religious and associational rights of those against whom these efforts are directed." Reported in: ombwatch.org, May 28.

(police . . . from page 138)

noted, would be tougher to penetrate. As for the garbage of GE Food Alert, Bly had a plan: "If we can get some help

from our friends who ride the truck. The alley is tight. I think the truck can drive down the alley but the container probably is rolled out and dumped. Looks like one dumpster for the building. I'm sitting on the building at 4:00 am tomorrow morning (if Ketchum gives us a budget)."

Another e-mail appeared to suggest that the Beckett Brown operatives were considering using a Washington police officer's badge to gain access to the garbage of the Center for Food Safety. And Ward was apparently hoping that Beckett Brown could persuade Ketchum to hire the company to monitor the ongoing activity of the activists opposed to genetically-engineered food.

BBI prepared reports on Greenpeace based on "confidential sources" for Ketchum. In at least one case, according to Rick Hind, legislative director for Greenpeace (who reviewed these reports at Mother Jones' request), a BBI report written for Ketchum contained information tightly held within the group about planned upcoming events.

A December 2, 1999, BBI report (which does not mention Ketchum) noted that Greenpeace had chosen Kellogg's, Kraft, and Quaker as "their main targets in the GE campaign," that it was developing a campaign tactic called "Food-Aid Expose" (which would highlight the export of genetically modified foods to other countries), and that it was helping a *Wall Street Journal* reporter track food companies involved in the debate over genetically engineered foods.

Over the years, Greenpeace has repeatedly been the target of public relations firms working for industry, and the group has experienced burglaries and caught would-be spies posing as students seeking employment. But Greenpeace officials say they did not know that their organization was under surveillance during that period of time.

In the late 1990s, Greenpeace was working with environmental groups in the stretch of Louisiana dubbed "Cancer Alley," organizing against various forms of industry pollution. Its work there and that of its Louisiana partners became another target for BBI. Reported in: *Mother Jones*, April 11. □

(dateline . . . from page 146)

issue, not being open, and not giving the parents permission to object. Parents perceived that they and their children were not being respected."

Labour Councillor for the Hartcliff Ward Mark Royston Brain said he has not seen the books but said, "There is no age at which a child is too young to learn that homophobia is wrong." He also stressed he did not want the education of Bristol's children to imitate the American model were he claims "both science and literature has suffered badly because interested parties have sought to ban or modify books or the teaching of their content." Reported in: *The Muslim News*, April 25.

Tel Aviv, Israel

Norman Finkelstein, the controversial Jewish American academic and fierce critic of Israel, has been deported from the country and banned from the Jewish state for ten years, it became known May 25.

Finkelstein, the son of a Holocaust survivor who has accused Israel of using the genocidal Nazi campaign against Jews to justify its actions against the Palestinians, was detained by the Israeli security service, Shin Bet, when he landed at Tel Aviv's Ben Gurion airport May 23. Shin Bet interrogated him for around 24 hours about his contact with the Lebanese Islamic militia, Hizbullah, when he travelled to Lebanon earlier this year and expressed solidarity with the group, which waged war against Israel in 2006. He also was accused of having contact with al-Qaida.

Finkelstein rejected the accusations, saying he had travelled to Israel to visit an old friend. "I did my best to provide absolutely candid and comprehensive answers to all the questions put to me," he told an Israeli newspaper in an e-mail exchange. "I am confident that I have nothing to hide. Apart from my political views, and the supporting scholarship, there isn't much more to say for myself: alas, no suicide missions or secret rendezvous with terrorist organisations. I've always supported a two-state solution based on the 1967 borders. I'm not an enemy of Israel."

Finkelstein is one of several scholars rejected by Israel in the increasingly bitter divide in academic circles, between those who support and those who criticise its treatment of Palestinians. Last year, Israel's most contentious "new historian", Ilan Pappe, left his job as senior lecturer in political science at the University of Haifa after he endorsed the international academic boycott of Israeli institutions, provoking the university president to call for his resignation.

Finkelstein also was refused tenure last year at Chicago's DePaul University for attacking several staunch Israel supporters and academics such as Harvard law professor, Alan Dershowitz.

The Association for Civil Rights in Israel said the deportation of Finkelstein was an assault on free speech. "The decision to prevent someone from voicing their opinions by arresting and deporting them is typical of a totalitarian regime," said the association's lawyer, Oded Peler. "A democratic state, where freedom of expression is the highest principle, does not shut out criticism or ideas just because they are uncomfortable for its authorities to hear. It confronts those ideas in public debate."

Finkelstein said he was held in a cell and encountered "several unpleasant moments with the guards" and eventually he borrowed the mobile phone of another detainee and called a friend who in turn called a lawyer. Although

entitled to appeal against the entry ban, Finkelstein said he would not contest it. Reported in: *Guardian*, May 26.

(from the bench . . . from page 152)

Late last year, three of Kozinski's Circuit Court colleagues noted in a ruling that "the owner of a collection of works who makes them available to the public may be deemed to have distributed copies of the works," a violation of copyright law if done without permission.

"For him to actually be held liable would take some further investigation, but I think it's possible," McSherry said. "It's a strange story. It's surprising to me." Reported in: *Los Angeles Times*, June 12. □

(is it legal? . . . from page 162)

Society was suspended by administrators at the Olympia college last March. The group had planned to hold a panel discussion entitled "Resisting the war at home and abroad," followed by an anti-war music festival. Evergreen officials asked the group not to hold the event, citing a moratorium on concerts after a February 15 concert on campus ended in a riot.

When the group held the event anyway, college officials suspended it until January 2009 and put it on probation until that March. After an appeal, the punishment was reduced to suspension until next fall, with reinstatement on probation until January 2009. After the appeal, students organized a sit-in on May 21 in the hallway outside the office of the vice president for student affairs, Art Costantino.

Officials of the student group said free speech is at issue, asserting the event was canceled because of its political content. Although there had been a concert moratorium in place during the event, other concerts that had been planned before the moratorium had been allowed to proceed, said Kteeo Olejnik, a member of the student group. Olejnik also said the university gave shifting reasons for why it opposed the event. Originally, it was supposed to be a benefit for Carlos Arredondo, whose son was killed in Iraq and who is now an anti-war activist. After Evergreen officials said campus rules prohibit public resources from supporting outside groups, Olejnik said the group altered the nature of the event. The group also changed its plan to have the Olympia Islamic Center provide food at the event, which Evergreen officials said also violated college policy.

Finally, the college said the event could not go on because it was a concert, Olejnik said. The group argued the panel and concert were separate events and offered to cancel the concert. However, she said, the university declined and canceled both events.

The student group's leaders decided to hold the events anyway in the belief they had been scrapped because of their political content. Although the punishment for staging the events was lessened after the appeal, "it wasn't gotten rid of," she said. That prompted the sit-in.

Jason Wettstein, media and community relations manager and spokesperson for Evergreen, insisted the cancellation of the event and eventual punishment against the group "had nothing to do with speech." The group was suspended because it held its events on college property without permission, he said.

He conceded that other concerts took place despite the moratorium, but said the problem with the Students for a Democratic Society events was how they were marketed. On the campus, Wettstein said, the event was advertised as a panel discussion. However, off campus, it was promoted as a concert and benefit, in apparent violation of restrictions on a public institution. "The college could not get a firm grasp of the nature of the event," he said.

Negotiations with the university were continuing, Olejnik said. Among the student group's demands are the rehiring, along with lost pay, for a student who was fired from her campus job, Olejnik said, because she joined the sit-in; the immediate reinstatement of the group with an apology from the university; and the redrafting of the policy for how a student organization loses its status to be written by students and the student activities office.

Wettstein said he could not go into the specifics of the negotiations but said the college hoped to resolve the matter "constructively." Reported in: insidehighered.com, June 5.

evolution and creation

Montgomery, Alabama

University professors have joined other science advocates to battle so-called "academic freedom" bills under consideration in Alabama, Louisiana, Michigan, and Missouri. The bills, along with similar ones that failed to win passage last week in Florida, ask teachers to promote "critical thinking," especially on topics such as evolution, global warming, and stem-cell research.

The National Center for Science Education, which advocates the teaching of evolution, has tracked the progress of each bill. The Alabama bill also would apply to faculty members at public colleges in the state.

The Panda's Thumb, a blog for "defenders of the integrity of science," posted a plea for help last week from Barbara Forrest, a professor of philosophy at Southeastern Louisiana University and a co-author of *Creationism's Trojan Horse: The Wedge of Intelligent Design*. Forrest is fighting a pair of bills in the state's Legislature and asked

supporters to contact people they know inside Louisiana to organize resistance.

"We want opposition from inside the state, not outside," she said. In a set of talking points about one of the Louisiana bills, Forrest called it a "stealth creationism bill."

University professors also have helped lead the battles against "academic freedom" bills in other states.

The Discovery Institute, which promotes the teaching of intelligent design, supports the passage of the legislation. In a news release it said many of the bills are modeled on draft legislation developed by the institute. Reported in: *Chronicle of Higher Education* online, May 6.

"harmful to minors"

Portland, Oregon

Portland bookseller Michael Powell and owners of a dozen independent bookstores and community organizations are suing the state attorney general and all 36 county district attorneys to block enforcement of a law forbidding the sale of sexually explicit material to people younger than eighteen.

Attorneys for the booksellers claim the four-month-old law violates their constitutional right to free speech and criminalizes material that would otherwise not be considered sexually explicit, like textbooks, comics or magazines.

The lawsuit was filed April 25, in U.S. District Court. No date has been set for a hearing on the issue. The booksellers and organizations are seeking an injunction to block the law. State Attorney General Hardy Myers and the district attorneys have not yet filed a response to the lawsuit.

Besides Powell's Books, Inc., other plaintiffs include the ACLU of Oregon, the Freedom to Read Foundation (FTRF), Dark Horse Comics, Inc., of Milwaukie, Annie Bloom's Books in Multnomah Village, St. Johns Booksellers, Twenty Third Avenue Books, the Cascade Aids Project, Planned Parenthood of the Columbia/Willamette, the Comic Book Legal Defense Fund and the Association of American Publishers.

The fifteen plaintiffs include FTRF Vice President Candace Morgan, who was asked to participate by the ACLU of Oregon, for whom she volunteers and speaks on library issues. Morgan, former associate director of the Fort Vancouver Regional Library District in Vancouver, Washington, said that while the statute was "very well-meaning," its vagueness results in a "chilling effect." Noting that parents and family members are not exempted, she said the parents of her 7-year-old grandson recently asked her to choose a sex-education book. She selected titles by Robie Harris, author of *It's Perfectly Normal* and other acclaimed but often-challenged works, but then wondered if they would violate the statute. "If giving them accurate information makes you subject to being charged, that's frightening," she concluded.

In the lawsuit filed by attorneys P. K. Runkles-Pearson and Michael A. Bamberger, the plaintiffs focus on House Bill 2843 that was signed into law July 31, 2007, by Gov. Ted Kulongoski. The law went into effect January 1 and makes it a crime to provide sexually explicit material to a child through sales or viewing, if the material was meant to "satisfy a sexual desire."

David Fidanque, executive director of the ACLU of Oregon, said the statutes "do not take into account whether someone's intent is to harm the minor." Instead, he said, they "criminalize all acts of furnishing 'sexually explicit' material no matter who is doing it and no matter for what purpose." The group notes that under the law a 17-year-old girl could be prosecuted for lending her thirteen-year-old sister a copy of Judy Blume's *Forever* and advising her to "read the good parts."

There are a handful of exemptions in the law for museums, law enforcement or publications. Bookstores are not included in the exemptions and they could be liable if they sell books about sex to minors, even if the material is in a textbook, according to the lawsuit.

The lawsuit claims the new law violates the booksellers' U.S. Constitution First, Fifth and Fourteenth amendment rights to free speech and equal protection. It claims the law is "overly broad" and "promotes self-censorship by creating a chilling effect on the sale, display, exhibition and dissemination of constitutionally protected speech and expression."

In an affidavit, Michael Powell said his six stores sold books of all types that could be considered sexually explicit under the new law. Those include the sale of books in stores and online on photography, graphic novels, and health and wellness titles.

"Powell's has in stock over 2 million volumes constituting over 1 million titles," Powell said in his affidavit. "We receive on an average over 5,000 new titles per week. Obviously, we cannot read each new title to determine whether there are any sexual explicit portions and if so, whether such portions 'serve some purpose other than titillation' (even if I knew what that meant)."

Ken Lizzi, Dark Horse Comics' general counsel and assistant secretary, said in an affidavit that his company store, Things From Another World, Inc., often sells graphic novels and comics that could put it in legal jeopardy. The company publishes about three dozen comics or other books each month that might include sexually explicit content, Lizzi said in the affidavit.

"I believe the only way for Dark Horse to ensure compliance under the statute would be to refrain from publishing this material entirely," He said. "Attempting to determine, book by book, what may fall under the purview of the statute, including whether there are any 'sexually explicit' portions and if so whether such portions 'serve some purpose other than titillation' (even if I knew what that meant) is totally impractical, unduly burdensome and surely would result in our over-inclusive self-censorship." Reported in: *Portland Tribune*, April 28; *American Libraries Online*, May 2.

"sexually explicit" material

South Bend, Indiana

At the end of March's legislative session, Indiana Gov. Mitch Daniels signed House Act 1042, which requires all new businesses selling "sexually explicit materials" to notify the secretary of state and pay a licensing fee of $250. Failure to comply is a Class B misdemeanor, punishable by a fine of up to $1,000 and up to 180 days in jail.

Exactly who—or what—defines "sexually explicit" is the $250 question, and the crux of any test of the law's constitutionality. One such test may come from the Media Coalition, a trade association representing publishers, libraries and booksellers in First Amendment cases.

"There's a lot of anger" in response to this law, said David Horowitz, the group's executive director. Although the bill's language was changed to reflect recommendations made by the Media Coalition (only new or relocating businesses are affected), Horowitz predicted there will still be "serious interest" in a lawsuit.

Daniel Conkle, a professor at the Indiana University School of Law, questioned the law's enforceability and criticized its vagueness. "This law is kind of a blunderbuss," Conkle said. If it was tightly targeted to "the seediest adult bookstores imaginable," it might be practical, he said. As it stands, however, "lots of other businesses are implicated as well."

Those other businesses may include retailers of books, magazines, games and movies—outlets very likely to carry at least one item that meets the law's definition of "sexually explicit."

"Sounds like they're really trying to restrict free trade," said Sara Bird, who co-owns The Griffon, a South Bend storefront where gaming enthusiasts and bibliophiles mix amid stacks of out-of-print books, model kits and quilting manuals. Her partner, Ken Peczkowski, is a former professor of Russian language and literature at Notre Dame University.

Philip Schatz co-owns Erasmus Books, which takes up the first two floors of a prairie-style house just a few blocks from downtown South Bend. He has no plans to relocate his business or open a new branch, but he is certain that if he did, his used-bookstore would be subject to the licensing requirements. The store sells "pretty much what you'd find at the public library," he said, but added: "We have books someone could find objectionable in our psychology section, or our art section, or our gay and lesbian section."

Despite the concern among Indiana booksellers, this law was not intended to target retailers like Schatz, Bird, and Peczkowski. Democratic state Rep. Terry Goodin said he wrote the bill as a way to identify potentially objectionable

businesses before they open. Goodin's district in the southern part of Indiana includes Crothersville, where chagrined locals have spent more than two years protesting outside an "adult superstore."

"This bill is in response to a situation in my district where a store gave residents the impression it would be selling books, movies and snacks," Goodin told reporters earlier this year.

Laws like Indiana's 1042 wouldn't be necessary if local governments would accept responsibility for zoning and land use ordinances, and not look to the state to solve their problems, said state Sen. Phil Boots. The Republican legislator called the law "ambiguous" and voted against the bill when it passed 44–2.

The vote was only slightly less lopsided in the House, where the yeas outnumbered the nays 84–12. One of the nays, Democratic Rep. Matthew Pierce, argued against the bill, citing various items from a Sunday newspaper circular that would be included under the umbrella of "sexually explicit material."

"I don't necessarily oppose the idea of giving communities a heads-up when certain kinds of businesses are moving in," Pierce said. "But this law's attempt to do that is totally flawed and overly broad. . . . We already have the legal tools to deal with this issue." He predicted 1042 would either be ignored or selectively enforced.

The governor's office, meanwhile, seems to have been caught off-guard by talk of a possible lawsuit. Although the Media Coalition and the ACLU of Indiana sent letters stating their opposition to the bill before it passed, Daniels spokeswoman Jane Jankowski said the office was never made aware of any complaints, or attempts "during the legislative effort to bring opposition to the bill."

Certainly, said Boots, there was no discussion on the floor of the Senate. "Some of us vote without realizing what we're voting for," he said. "I think there might have been more opposition if people had actually considered it more."

Pierce dismissed the suggestion that his colleagues didn't understand the bill. "I think a lot of people figured, 'I'm not going to put myself in the position of having to explain why I voted against protecting kids from sexually explicit material. If it's unconstitutional, the courts will take care of it,'" he said.

Indiana House Act 1042 requires a registration statement and a $250 licensing fee from any new or relocated retail outlet selling any "sexually explicit" material, defined as a product that "is designed in use in, marketed primarily for or provides for" any sexual contact or activity, or anything of a sexual nature that is "harmful to minors."

According to Indiana Code 35-49-2-2, material is considered "harmful to minors" even if the product or service is not intended to be used by or offered to a minor, if:

1. It describes or represents, in any form, nudity, sexual conduct, sexual excitement or sadomasochistic abuse.
2. Considered as a whole, it appeals to the prurient interest in sex of minors.
3. It is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable matter for or performance before minors.
4. Considered as a whole, it lacks serious literary, artistic, political or scientific value to minors. Reported in: *Chicago Tribune*, April 10. □

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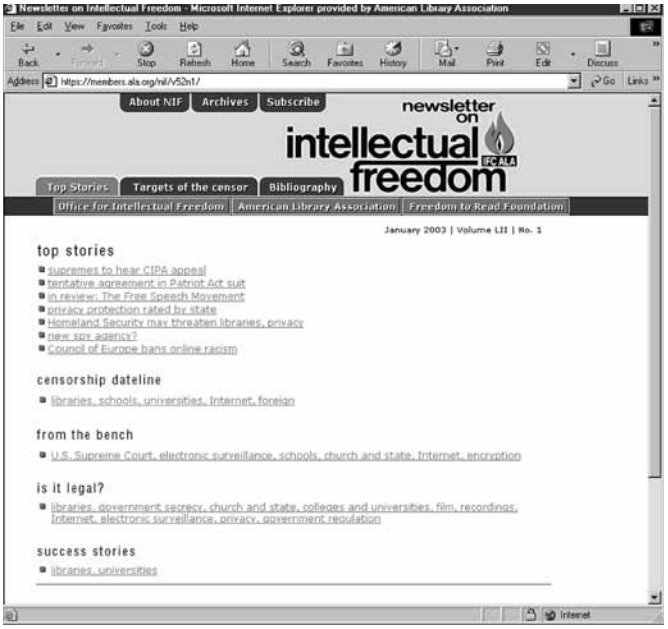

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