newsletter on intellectual freedom

IFC ALA

Editor: Judith F. Krug, Director
Office for Intellectual Freedom, American Library Association
Associate Editor: Henry F. Reichman, California State University, Hayward

ISSN 0028-9485

May 2008 ☐ Vol. LVII ☐ No. 3 ☐ www.ala.org/nif

librarians' outcry returns "abortion" to federal health database

The March 31 discovery by an academic librarian that the administrator of the reproductive-health database Popline (Population Information Online) had placed the search word "abortion" on its stop list, or file of blocked terms, led the dean of Johns Hopkins University's Bloomberg School of Public Health to reverse the decision a scant five days later.

Administered by Johns Hopkins, Popline is funded by the U.S. Agency for International Development (USAID) and contains more than 360,000 items about family planning and sexually transmitted disease. However, federal laws dating back to 1973 prohibit the use of federal funds for abortion advocacy or supplies, according to the April 10 Johns Hopkins University News-Letter. USAID denies funding to non-governmental organizations that perform or actively promote abortion as a method of family planning in other nations. The policy began under President Ronald Reagan and was revived when President Bush took office in 2001. Some critics refer to it as the "Global Gag Rule."

After finding that a routine Popline search on the word "abortion" retrieved fewer citations at the end of March than it had in January, librarian Gloria Won of the Medical Center of the University of San Francisco e-mailed database officials to ask about the discrepancy. Popline Database Manager/Administrator Debra L. Dickson replied April 1, "We recently made all abortion terms stop words. As a federally funded project, we decided this was best for now." She went on to suggest that librarians could substitute the terms "fertility control, postconception" or "pregnancy, unwanted."

An outraged Won and her supervisor Gail L. Sorrough alerted the library community on a medical-librarian discussion list and soon word had spread to the biblioblogosphere and the mainstream news media. On April 4, Michael Klag, dean of the public health school, stated that he "could not disagree more strongly with this decision," adding that he had "directed that the Popline administrators restore 'abortion' as a search term immediately."

Reporting on the findings of an investigation he had ordered, Klag explained April 8 that the stop-listing of the word "abortion" began in February; Popline officials took the action unilaterally after USAID inquired about two articles in the Winter 2008 issue of *A, the Abortion Magazine* characterizing the termination of pregnancy as a human right.

(continued on page 119)

Published by the ALA Intellectual Freedom Committee,
Kenton L. Oliver, Chair

in this issue

targets of the censor

books

periodicals

theater

video

(ISSN 0028-9485)

Newsletter on Intellectual Freedom is published bimonthly (Jan., Mar., May, July, Sept., Nov.) by the American Library Association, 50 E. Huron St., Chicago, IL 60611. The newsletter is also available online at www.ala.org/nif. Subscriptions: $70 per year (print), which includes annual index; $50 per year (electronic); and $85 per year (both print and electronic). For multiple subscriptions to the same address, and for back issues, please contact the Office for Intellectual Freedom at 800-545-2433, ext. 4223 or oif@ala.org. Editorial mail should be addressed to the Office of Intellectual Freedom, 50 E. Huron St., Chicago, Illinois 60611. Periodical postage paid at Chicago, IL at additional mailing offices. POSTMASTER: send address changes to Newsletter on Intellectual Freedom, 50 E. Huron St., Chicago, IL 60611.

ALA, other book groups defend reader privacy from national security letters

Six organizations have banded together to fire two new salvos in an ongoing battle against the use of National Security Letters to obtain information about individuals' reading habits under the USA PATRIOT Act.

On March 17, the American Library Association joined with five other groups to file an *amicus curiae* brief in a case brought by an internet service provider challenging the FBI's use of the letters to demand private information from libraries, telephone companies, internet service providers, and other data-gathering bodies. Last September, a District Court judge ruled that the NSL provision of the PATRIOT Act violated the First Amendment, and the government appealed the case, *Doe* v. *Mukasey*, to the U.S. Court of Appeals for the Second Circuit.

The brief, submitted by ALA, the American Booksellers Association Foundation for Free Expression, the Association of American Publishers, the American Association of University Professors, the Freedom to Read Foundation, and PEN American Center, states that the NSL statute, even as revised by Congress, "chills protected speech," pointing out that "even though the new Section 2709 purports to create an exemption for libraries, it does nothing of the sort for the vast majority of libraries."

In an advertisement in the April 1 issue of the Capitol Hill newspaper *Roll Call,* ALA, AAP, ABA, and the PEN American Center urged Congress to restore the reader-privacy safeguards that were eliminated by the PATRIOT Act. The open letter, which cited two recent reports by the Justice Department's Inspector General showing that the FBI has violated the law thousands of times since Congress expanded the bureau's authority to issue NSLs, called for passage of the National Security Letters Reform Act (S. 2088 and H.R. 3189). "The NSL Reform Act gives the FBI the tools it needs to conduct urgent investigations without sacrificing our most basic constitutional principles," the letter said.

ABA, ALA, AAP and PEN launched the Campaign for Reader Privacy in 2004 to fight for changes in the PATRIOT Act, which authorized the federal government to issue secret orders to bookstores and libraries forcing them to turn over the records of their customers and patrons without demonstrating probable cause to believe they were involved in terrorist activity. The Inspector General of the Justice Department has reported that the FBI issued 200,000 NSLs in the period 2003–06.

S. 2088 and H.R. 3189 would restrict FBI searches to the records of those either suspected of or directly connected to terrorism or espionage. It also limits the time that booksellers and librarians are barred by a gag provision from revealing the receipt of an NSL, which is used to obtain Internet records, or a Section 215 order, which can be used to demand all other records.

S. 2088 was introduced by Senator Russ Feingold (D-WI) and is co-sponsored by eleven Senators. H.R. 3889 was introduced by Rep. Jerry Nadler (D-NY) and is co-sponsored by twenty-seven Representatives. Reported in: *American Libraries* online, April 4; *School Library Journal,* March 28. □

FBI found to misuse security letters

The FBI has increasingly used administrative orders to obtain the personal records of U.S. citizens rather than foreigners implicated in terrorism or counterintelligence investigations, and at least once it relied on such orders to obtain records that a special intelligence-gathering court had deemed protected by the First Amendment, according to two government audits released March 13.

The episode was outlined in a Justice Department report that concluded the FBI had abused its intelligence-gathering privileges by issuing inadequately documented "national security letters" from 2003 to 2006, after which changes were put in place that the report called sound.

A report a year ago by the Justice Department's inspector general disclosed that abuses involving national security letters had occurred from 2003 through 2005 and helped provoke the changes. But the report makes it clear that the abuses persisted in 2006 and disclosed that 60 percent of the nearly 50,000 security letters issued that year by the FBI targeted Americans.

Because U.S. citizens enjoy constitutional protections against unreasonable searches and seizures, judicial warrants are ordinarily required for government surveillance. But national security letters are approved only by FBI officials and are not subject to judicial approval; they routinely demand certain types of personal data, such as telephone, e-mail, and financial records, while barring the recipient from disclosing that the information was requested or supplied.

According to the findings by Justice Department Inspector General Glenn A. Fine, the FBI tried to work around the Foreign Intelligence Surveillance Court, which oversees clandestine spying in the United States, after it twice rejected an FBI request in 2006 to obtain certain records. The court had concluded "the 'facts' were too thin" and the "request implicated the target's First Amendment rights," the report said.

But the FBI went ahead and got the records anyway by using a national security letter. The FBI's general counsel, Valerie E. Caproni, told investigators it was appropriate to issue the letters in such cases because she disagreed with the court's conclusions.

In total, Fine said, the FBI issued almost 200,000 national security letters from 2003 through 2006, and they were used in a third of all FBI national security and computer probes during that time. Fine said his investigators have identified hundreds of possible violations of laws or internal guidelines in the use of the letters, including cases in which FBI agents made improper requests, collected more data than they were allowed to, or did not have proper authorization to proceed with the case.

Fine also pointed to the FBI's "troubling" use of the letters to obtain vast quantities of telephone numbers or other records with a single request. Investigators identified eleven such cases, involving information related to about 4,000 phone numbers, that did not comply with USA PATRIOT Act requirements or that violated FBI guidelines.

The latest findings reignited long-standing criticism from Democrats and civil liberties groups, who said the FBI's repeated misuse of its information-gathering powers underscores the need for greater oversight by Congress and the courts.

"The fact that these are being used against U.S. citizens, and being used so aggressively, should call into question the claim that these powers are about terrorists and not just about collecting information on all kinds of people," said Jameel Jaffer, national security director at the American Civil Liberties Union. "They're basically using national security letters to evade legal requirements that would be enforced if there were judicial oversight."

Justice spokesman Dean Boyd said in a statement that Fine's report "should come as no surprise" because the survey ended in 2006, before the FBI introduced procedural changes to better control and keep track of requests for the security letters.

FBI Assistant Director John Miller said a new automated system will keep better tabs on the letters, and they are now reviewed by a lawyer before they are sent to a telephone company, Internet service provider, or other target. "We are committed to using them in ways that maximize their national security value while providing the highest level of privacy and protection of the civil liberties of those we are sworn to protect," Miller said.

Fine said that FBI employees "self-reported" eighty-four possible violations of laws or guidelines in the use of the letters, in 2006, which "was significantly higher than the number of reported violations in prior years." But he noted that his office already had begun its initial investigation into the letters by then, which might have contributed to the increase.

About a quarter of the reported incidents were because of mistakes made by telephone or Internet providers, including some in which they provided either the wrong information or disclosed more than the FBI requested. But many of those cases should have been caught by the FBI earlier, Fine said.
Reported in: *Washington Post,* March 14. ☐

NSA's domestic spying grows

Five years ago, Congress killed an experimental Pentagon antiterrorism program meant to vacuum up electronic data about people in the United States to search for suspicious patterns. Opponents called it too broad an intrusion on Americans' privacy, even after the September 11 terrorist attacks. But the data-sifting effort didn't disappear. The National Security Agency, once confined to foreign surveillance, has been building essentially the same system.

The central role the NSA has come to occupy in domestic intelligence gathering has never been publicly disclosed. But an inquiry by the *Wall Street Journal* reveals that its efforts have evolved to reach more broadly into data about people's communications, travel, and finances in the United States than the domestic surveillance programs brought to light since the 2001 terrorist attacks.

Congress now is hotly debating domestic spying powers under the main law governing U.S. surveillance aimed at foreign threats. An expansion of those powers expired in February and awaits renewal. The biggest point of contention over the law, the Foreign Intelligence Surveillance Act, is whether telecommunications and other companies should be made immune from liability for assisting government surveillance.

Largely missing from the public discussion is the role of the highly secretive NSA in analyzing that data, collected through little-known arrangements that can blur the lines between domestic and foreign intelligence gathering. Supporters say the NSA is serving as a key bulwark against foreign terrorists and that it would be reckless to constrain the agency's mission. The NSA says it is scrupulously following all applicable laws and that it keeps Congress fully informed of its activities.

According to current and former intelligence officials, the spy agency now monitors huge volumes of records of domestic e-mails and Internet searches as well as bank transfers, credit-card transactions, and travel and telephone records. The NSA receives this so-called transactional data from other agencies or private companies, and its sophisticated software programs analyze the various transactions for suspicious patterns. Then they spit out leads to be explored by counterterrorism programs across the U.S. government, such as the NSA's own Terrorist Surveillance Program, formed to intercept phone calls and e-mails between the United States and overseas without a judge's approval when a link to al Qaeda is suspected.

The NSA's enterprise involves a cluster of powerful intelligence-gathering programs, all of which sparked civil-liberties complaints when they came to light. They include a Federal Bureau of Investigation program to track telecommunications data once known as Carnivore, now called the Digital Collection System, and a U.S. arrangement with the

(continued on page 119)

arbitrator rules against EPA on library closures; agency gives Congress library reopening timeline

The Public Employees for Environmental Responsibility (a national alliance of local, state, and federal resource professionals) announced February 28 that a federal arbitrator had ruled that the Environmental Protection Agency engaged in unfair labor practices and acted in bad faith when it abruptly ordered the closing of seven of the agency's ten regional libraries over the past two years. The decision was the latest in a series of repudiations from Congress and the library, scientific, and environmental communities of the closures and limitation of overall access to decades of data that culminated in a December order to reinstate the brick-and-mortar EPA libraries.

In a February 15 decision, arbitrator George Edward Larney stated that EPA management must "engage the union in impact and implementation bargaining in a timely manner" regarding any issues related to "the reorganization of the agency's library network that directly affect and may potentially have an adverse impact on the working conditions of bargaining unit employees."

Acknowledging that the agency "proceeded with a good degree of caution and with a great deal of thought" as early as 2003, Larney stated that, nonetheless, the cutbacks were unilaterally decided upon by management "with virtually no input by other constituencies such as general public users of the EPA library network, other federal and public library systems, and, in particular and most importantly, the several unions representing the agency's bargaining unit employees."

The opinion went on to say that "the very real problem now is to fashion a remedy . . . as it would be impossible for the agency to comply with reopening the libraries that were physically dismantled and closed and, while it would be difficult, but not impossible, to restore the function and hours of operations at the libraries in Regions 1, 2, 3, 4, 9, and 10, doing so would be highly impractical given budgetary constraints."

"While this ruling is a welcome development," PEER Associate Director Carol Goldberg remarked, "EPA should not continue to shut the public—which is paying all the bills—out of the planning for restoration of these invaluable assets."

One such interested patron is environmentalist Verena Owen, who used the Region 5 EPA library in Chicago in 2002 to help make her case against the establishment of a sludge incinerator in Waukegan, Illinois. She told the January 24 Northwestern University publication *Medill Reports* that she found the library website unworkable due to broken links and lamented the relocation of most print items to a storage area in Cincinnati. "If you need some information, can you wait two weeks or four weeks for the book to come in? In the world I work in, which is air quality, no you can't," Owen contended.

On March 26, the EPA submitted its EPA National Library Network Report to Congress on the state of the EPA National Library Network. The report noted that the four libraries that were closed will be reopened by September 30, namely Region 5 in Chicago, Region 6 in Dallas, Region 7 in Kansas City, and the EPA Headquarters Repository and the Chemical Library in Washington, D.C.; All libraries will be staffed by a librarian and assistants; will contain reference and book collections; and will offer electronic services, interlibrary loan, and public access.

The Federal Library and Information Center Committee has formed an advisory board that is working with EPA staff, advising on strategic direction library procedures; and $1 million in appropriations will be used to reestablish libraries, collections, and equipment, and for a needs assessment.

The EPA has said it will continue to be in contact with affected stakeholders as the library plans are finalized. The Headquarters Repository and the Chemical Library in Washington, D.C., will be jointly managed by the Office of Environmental Information and the Office of Prevention, Pesticides, and Toxic Substances.

The release of the EPA report came almost two weeks after the Investigations and Oversight Subcommittee of the House Science and Technology Committee held a March 13 hearing about the 2006 closures. "No library should be closed until its holdings have been effectively cataloged, evaluated, and digitized," subcommittee Chairman Brad Miller (D-NC) said, in apparent agreement with ALA President-Elect Jim Rettig, who expressed concern about "exactly what materials have been shipped around the country . . . and whether a record is being kept of what is being dispersed and what is being discarded."

The agency also received two sharp rebukes in February regarding the library closures: a report from the Government Accountability Office concluding that the EPA's actions were hasty and ill-considered, and a ruling by a federal arbitrator for unfair labor practices and acting in bad faith toward library employees. Reported in: *American Libraries* online, February 29, April 4. □

Google investors seek censorship ban

A group of Google investors is proposing that the Internet company create a committee on human rights and establish policies that forbid it from engaging in censorship. Google will let shareholders vote on the measures at its May 8 annual meeting, according to a regulatory filing made March 25.

(continued on page 122)

2008 Jefferson Muzzle Awards

Since 1992, the Thomas Jefferson Center for the Protection of Free Expression has celebrated the birth and ideals of its namesake by calling attention to those who in the past year forgot or disregarded Mr. Jefferson's admonition that freedom of speech "cannot be limited without being lost."

Announced on or near April 13—the anniversary of the birth of Thomas Jefferson—the Jefferson Muzzles are awarded as a means to draw national attention to abridgments of free speech and press and, at the same time, foster an appreciation for those tenets of the First Amendment.

Because the importance and value of free expression extend far beyond the First Amendment's limit on government censorship, acts of private censorship are not spared consideration for the dubious honor of receiving a Muzzle.

The following are the "winners" of this year's Jefferson Muzzles.

1–2) Sarpy County (Neb.) Attorney L. Kenneth Polikov, U.S. Attorney for the Western District of Louisiana Donald Washington, and Acting Head of the Justice Department's Civil Rights Division Grace Chung Becker

For their respective criminal prosecutions of individuals for acts of symbolic speech, 2008 Jefferson Muzzles are awarded to Sarpy County (Neb.) Attorney L. Kenneth Polikov, U.S. Attorney for the Western District of Louisiana Donald Washington, and Acting Head of the Justice Department's Civil Rights Division Grace Chung Becker.

Freedom of speech is an easy principle to defend in the abstract. Even the staunchest defenders of free speech will admit, however, that there are examples of speech so offensive, repugnant, and hurtful that their first reaction is a desire to muzzle the speaker. Yet it is only by defending speech we value least—speech that we truly hate—that we ensure the right to speak out freely on the issues we value most.

This principle apparently was forgotten or ignored by the prosecutors in two different criminal cases initiated in 2007 and continuing today. The first is a state court case involving a June 2007 protest in Bellevue, Nebraska, near the funeral for a U.S. soldier killed in Iraq. Shirley Phelps-Roper is a member of the Kansas-based Westboro Baptist Church whose members have reportedly protested at more than 280 military funerals in 43 states since June 2005. The church believes the deaths of U.S. soldiers represent God's punishment for a nation that harbors gays and lesbians. In response to the church's protests, at least 38 states have passed laws restricting how close protestors can get to a military funeral.

Yet despite the fact Phelps-Roper had a permit and held her protest well beyond the 300 feet required by the Nebraska protest law, she did something that provided the Bellevue authorities a pretext to arrest her anyway: she allowed her teb-year-old son to place an American flag on the ground and stand on it. When this was observed by a Bellevue police officer, Phelps-Roper was arrested and charged with violating the state's flag-desecration law, negligent child abuse, contributing to the delinquency of a minor, and disturbing the peace. Central to all the charges, however, is Phelps-Roper allowing her son to stand on the U.S. flag.

Although the Nebraska flag desecration law is technically still on the books, it was passed in 1977 prior to two U.S. Supreme Court decisions striking down both state and federal laws prohibiting desecration of the U.S. flag. As the Court wrote in one of those decisions, "[p]unishing desecration of the flag dilutes the very freedom that makes this emblem so revered, and worth revering." Despite the presumptive unconstitutionality of the law, Sarpy County Attorney L. Kenneth Polikov continues to charge Phelps-Roper with violating it.

The federal case arises out of a number of racially charged incidents occurring in 2007 in Jena, Louisiana. Authorities in Jena had been criticized for their handling of those incidents, which included the hanging of nooses in a tree by three white high school students. Months of racial tension followed the noose incident, including the physical assault of a white student allegedly by six black classmates. The black students were prosecuted but the three white students responsible for the nooses were not.

On September 20, a civil rights march with as many as 20,000 people took place in Jena. That evening, eighteen-year-old Jeremiah Munson and a sixteen-year-old friend made two nooses out of extension cords, draped them off the back of a pickup truck, and drove the truck by a bus depot where numbers of black marchers were waiting for buses to return to Tennessee. In January 2008, Grace Chung Becker, acting head of the U.S. Justice Department's Civil Rights Division, announced that the U.S. Attorney's Office for the Western District of Louisiana had sought and received grand jury indictments against Munson for federal hate crimes and for taking part in a civil rights conspiracy. If convicted of both charges, Munson could face a maximum of eleven years in prison and $350,000 in fines.

The views symbolically expressed by both Munson and Phelps-Roper are clearly repugnant and reprehensible. Yet it is equally clear that both are being prosecuted solely for the expression of those views. Because the First Amendment does not limit its protections to only that speech we approve, the prosecutors of Jeremiah Munson and Shirley Phelps-Roper each earn a 2008 Jefferson Muzzle.

3) Lancaster County (Neb.) District Judge Jeffre Cheuvront

For forbidding all witnesses, including the alleged victim, from using the word *rape* and other terms in a trial for

first-degree sexual assault, a 2008 Jefferson Muzzle goes to Lancaster County (Neb.) District Judge Jeffre Cheuvront.

In the fall 2006 first-degree sexual assault trial of Pamir Safi, Lancaster County District Judge Jeffre Cheuvront granted the defense's motion to bar witnesses from using the words *rape, victim, assailant, sexual assault kit,* and *sexual assault nurse examiner*. The language ban left all witnesses, including the alleged victim, Tory Bowen, essentially with the same word—*sex*—to describe both consensual and non-consensual intercourse. Prosecutors feared that the ban would damage Bowen's credibility with the jury. Compounding their concern was that the judge also ordered that jurors were not to be told of the ban. The trial resulted in a hung jury.

As in most states, Nebraska state law allows judges to bar the use in court of words or phrases that could prejudice or mislead a jury. Judge Cheuvront said that he implemented a ban in this case to ensure the defendant's constitutional right to a fair trial. Lancaster County Attorney Gary Lacey, whose office prosecuted the case, said judges often prohibit attorneys from using words like *defendant* or *victim*, but could not recall a ban on the word *rape*.

Safi was to be tried again in the summer of 2007. During pre-trial proceedings, Judge Cheuvront announced that the ban would remain in effect and that he intended to require witnesses to sign an order before testifying to avoid violations of the ban. Prosecutors responded with a motion to ban the words *sex* and *intercourse*—words the defendant preferred to describe the act—but the motion was denied. The second trial ended before it really began, however, when Judge Cheuvront declared a mistrial during jury selection, citing news coverage and public protests on Bowen's behalf that made selecting an impartial jury impossible.

Bowen then sued Judge Cheuvront in federal court over the gag order. Her suit was dismissed by United States District Judge Richard Kopf citing U.S. Supreme Court precedent that a federal judge should not use his or her discretionary power under the declaratory judgment statute to interfere with a pending state criminal prosecution except in the most extraordinary of circumstances. Judge Kopf held that Bowen's attorneys had failed to properly address this issue in their filings.

However, Judge Knopf also expressed his concerns over the substance of the underlying case: "For the life of me, I do not understand why a judge would tell an alleged rape victim that she cannot say she was 'raped' when she testifies in a trial about rape. Juries are not stupid. They are very wise. In my opinion, no properly instructed jury is going to be improperly swayed because a woman uses the word 'rape' rather than some tortured equivalent for the word."

Following Bowen's suit against him, Judge Cheuvront clarified that witnesses could use the term *sexual assault,* but the rest of the ban remained in effect. Despite earlier claims to the contrary, however, in January 2008 prosecutors announced they would not seek a third trial of the case. In response to hearing that the charges against Safi were being dropped, Bowen said, "I'm still trying to comprehend this."

Although a criminal defendant's right to a fair trial is a constitutional imperative of a very high order, the protection of that interest must also recognize and preserve the First Amendment rights of participants in the legal process, and most especially the right of a victim to explain to the court and the public the basis for the charges brought on her behalf—specifically, to declare in a case such as this one that she had been raped. For failing to appreciate the importance of freedom of expression within the criminal system and specifically in his courtroom, Lancaster County District Judge Jeffre Cheuvront earns a 2008 Jefferson Muzzle.

4) The New York State Department of Motor Vehicles

For Recalling a Vanity Automobile License Plate Because its Message "GETOSAMA" was deemed offensive, a 2008 Jefferson Muzzle goes to The New York State Department of Motor Vechicles.

At first glance, it may seem unfair to single out the New York Department of Motor Vehicles for censure because it recalled a "vanity" license plate. After all, every state that allows vanity license plates has a policy limiting the 7–8 word and letter combinations vehicle owners may use to craft a personal message; and each year every one of those states denies applications on the basis that the proposed message violates its policy on license plate content. Many states typically deny applications for plates whose messages are "obscene" or "patently offensive." Although the refusal of a particular vanity plate application may cause one to question the judgment of a state DMV, in most cases the reasons for the denial are at least discernible. But in 2007, the New York DMV recalled a vanity plate for reasons that are difficult to comprehend under any reasoning.

In early November 2007, retired police officer Arno Herwerth received the plates bearing the message he had requested, "GETOSAMA." Herwerth believes his message is a succinct but patriotic call to "get" the mastermind of the September 11 terrorist attacks. Yet two weeks after receiving the plates, the New York DMV informed Herwerth that they must be returned because "GETOSAMA" violated the state prohibition of messages that could be considered "obscene, lewd, lascivious, derogatory to a particular ethnic group or patently offensive." Herwerth sued the New York DMV in federal court claiming a violation of his First Amendment rights. The case is continuing, although the New York DMV reportedly did try to settle the case by informally offering to let Herwerth keep the plates. Herwerth denied the offer because it did not include payment of his legal fees. The case is pending.

The New York DMV and those of other states offer a variety of justifications for controlling the content of vanity license plates. One claim often asserted is that a particularly

provocative message might distract other drivers, thereby leading to more accidents. But a concern for safety has little merit when one considers that people have the First Amendment right (and often exercise it) to post incredibly provocative messages on their cars in the form of bumper stickers. (Indeed, while Arno Herwerth is fighting his case in court, he is displaying a homemade version of his "GETOSAMA" license plate in his car window.)

Another justification (and one that has been accepted by some courts) is that license plates are actually owned by the state and, as government property, the state may control the content of messages appearing on the plates. Again, such a justification is tenuous at best when one considers that the message on a vanity plate is not the state's but the car owner's.

Obviously, the Constitution does not require states to offer vanity plate programs. If a state chooses to do so, however, it must administer the program in a manner consistent with the principles of the First Amendment. At the very least, a state should approve all vanity plate applications unless there is a clear and rational reason for denying them.

In the case of "GETOSAMA," the basis for the denial is anything but clear. Moreover, the fact that the New York DMV offered the plates back to Herwerth to settle the case indicates a lack of conviction on the DMV's part that the message "GETOSAMA" is an inappropriate message for a New York license plate. The New York DMV had ample time to reverse its decision before Herwerth filed his lawsuit. For failing to do so, the New York DMV earns a 2008 Jefferson Muzzle.

5) The Scranton (Pa.) Police Department

For bringing criminal charges against a woman for screaming profanities at an overflowing toilet inside her own home, a 2008 Jefferson muzzle goes to the Scranton (Pa.) Police Department.

We have all seen it happen. Rather than recede as it should, the water in the toilet bowl steadily rises toward the rim. We start begging: "Please stop. Oh please, please, stop." For the lucky ones, the porcelain hears the pleas and the water stops before breaching the rim. For the unlucky, hope immediately turns to panic as water gushes out onto the floor. At that moment, who would not understand somebody cursing in frustration at a commode deaf to one's cry for help? The Scranton Pennsylvania Police Department, that's who.

Last October, Dawn Herb of Scranton was in her house when one of its toilets began to overflow. With the water leaking through the floor into her kitchen below, Herb yelled to her daughter to get a bucket and mop, and then she let loose a tirade of foul language directed at the toilet itself. So loud was Herb in expressing her frustration that a neighbor heard her. The neighbor, an off-duty officer with the Scranton Police Department, yelled to Herb to keep it down. When she continued, the neighbor called an on-duty fellow officer on the latter's cell phone to report Herb. That officer arrived and issued Herb a citation for disorderly conduct, a charge carrying a possible sentence of ninety days in jail and a fine up to $300.

It should be noted that in Scranton (as in many jurisdictions around the country), the police may bring charges of lesser criminal offenses before the court without a prosecuting attorney. The Scranton Police Department was not without legal advice, however, because it was not long before the national media picked up the story of the "toilet-tirade," bringing intense scrutiny to the case, much of it involving legal commentators correctly explaining that "colorful language" is not illegal.

A hearing on the charges was set for December 10, nearly two months to the day after the incident. Herb was represented by attorney Barry Dyller, a private attorney who was asked to represent Herb by the American Civil Liberties Union of Pennsylvania. Dyller provided the court with a slew of federal and Pennsylvania cases detailing how the First Amendment prevents government from punishing citizens for merely cursing. On December 13, 2007, District Judge Terrence Gallagher dismissed the charge against Herb holding that, "[a]lthough the uncontroverted representations attributable to the Defendant may be considered by some to be offensive, vulgar, and imprudent, nonetheless, such representations are protected speech pursuant to the First Amendment of the Constitution of the United States of America."

Police officers are not attorneys and, therefore, should not be expected to understand every nuance of the law. It is perhaps understandable therefore that an officer on the street might interpret loud swearing coming from someone's home as disorderly conduct the first time he encounters it. But this case was more than a knee-jerk reaction; the ranking authorities in the Scranton Police Department had ample time to appreciate the lack of a legal basis for the charge and drop it. Yet they refused to do so; instead, they subjected Dawn Herb to two months of fear that she could be imprisoned for cursing at a toilet in her own home. For refusing to flush an unconstitutional charge, a 2008 Jefferson Muzzle goes to the Scranton Police Department.

6) The Federal Emergency Management Agency

For scheduling and executing a contrived or fabricated press conference, during which members of the legitimate news media were unable to ask questions, a 2008 Jefferson Muzzle goes to The Federal Emergency Management Agency (FEMA).

When a federal government agency makes and disseminates news to the media, journalists have at least three basic expectations: first, that they will receive adequate notice from the agency of press conferences and other media

events; second, that questions will be invited only from legitimate representatives of the press when the conference occurs; and third, that agency representatives will appear and respond to real and substantial questions posed by the news media rather than to questions those officials might have wished were asked instead.

An event scheduled in late October 2007, by the FEMA, incredibly managed to violate or thwart each of those media expectations. Still smarting from intense criticism about its handling of the aftermath of Hurricane Katrina along the Gulf Coast, the agency announced a press conference on its many efforts to assist the victims of wildfires in California. Reporters received only fifteen minutes notice before the event began; as a result, few, if any, legitimate journalists were able to attend and cover the event. FEMA did provide an 800 number so reporters could call in, but only to listen, not to ask questions. Second, and even more egregious, those who appeared to be reporters and asked most of the questions were in fact agency staff members planted there for that precise purpose. Third, the questions posed by those staff-masquerading-as-reporters were gently described by the Associated Press as "soft and gratuitous," and not surprisingly elicited answers congenial to the image that FEMA had hoped to reinforce.

Homeland Security Chief Michael Chertoff (to whom FEMA reports) expressed his deep displeasure when he learned of the phony conference, and vowed there would be no recurrence within his Department. Several responsible staff members were fired or otherwise sanctioned. FEMA apologized profusely to the news media, and promised a review of the agency's public affairs procedures.

Nonetheless, grave damage had been done to the agency's credibility, and perhaps even more broadly to the news media's level of confidence in official government dispatches and releases. While this event did not entail efforts to restrict or suppress information of the type that usually occasions a Muzzle, FEMA's incredible and unique attempt to substitute false or fabricated speech for free speech surely merits a 2008 Jefferson Muzzle.

7–8) CBS radio, MSNBC, and the 2007 Managing Board of the *Cavalier Daily*

For firing radio talk show host Don Imus and cartoonist Grant Woolard in the face of intense public criticism of on-air comments made by Imus and an editorial cartoon created by Woolard, 2008 Jefferson Muzzles go to CBS radio and MSNBC and the 2007 managing board of the *Cavalier Daily*.

Although CBS radio, MSNBC, and the *Cavalier Daily* represent vastly different mediums of communications—a national radio broadcaster, a cable television news channel, and a student-run university newspaper—they share a common bond in that they avail themselves of the protections of the First Amendment on a daily basis. Unfortunately, these three organizations have something else in common: in two separate incidents in 2007 they each took actions that, although not violating the letter of the First Amendment, were certainly contrary to the spirit of the amendment's freedom of press clause.

During his nationally syndicated CBS radio talk show of April 4, 2007, host Don Imus referred to the predominantly African-American players on the Rutgers University women's basketball team as "nappy-headed hos." Viewers of MSNBC that morning also heard the comment as the television cable news channel regularly simulcast the Imus show. Understandably, the phrase generated a storm of criticism, much of it calling on CBS radio to fire Imus. Instead, CBS radio initially suspended Imus for two weeks. In the week that followed the incident, Imus apologized publicly and repeatedly for his comments, yet pointed criticism of him escalated.

Then on April 11, MSNBC announced it would no longer simulcast the Imus show. The next day, CBS radio announced that the comments gave it cause to terminate the $40 million, five-year contract with Imus, effectively firing him. In June, Imus' lawyer Martin Garbus announced Imus would be suing CBS radio for breach of contract, arguing that not only was CBS radio aware that Imus regularly made provocative comments, but also that the terms of his contract encouraged him to be controversial. (MSNBC was not named in the lawsuit because it had no contract with Imus, but only a contract with CBS to televise the show.) Although vowing to vigorously contest Imus' claims, CBS radio settled the lawsuit in August 2007 for an undisclosed amount.

The month following the settlement of the Imus lawsuit, a similar but completely unrelated incident took place at the University of Virginia involving the *Cavalier Daily,* the student-run newspaper that on many occasions in the past stood behind the content of its pages when it aroused public criticism. In its Tuesday, September 4 edition, the *Cavalier Daily*_ran a cartoon by veteran student cartoonist Grant Woolard entitled "Ethiopian Food Fight." In the cartoon, nine almost naked black men were depicted fighting one another with chairs, shoes, sticks, and a pillow. Prior to its publication, the cartoon had been reviewed and approved by at least two of the newspaper's five member managing board, as required under board policy.

Shortly after publication, the newspaper's offices started receiving complaints from students and faculty who perceived the cartoon as racist. In response, the cartoon was removed from the *Cavalier Daily*'s website. On Wednesday, nearly two hundred UVA students staged a sit-in outside the paper's offices demanding both an apology from the newspaper and that Woolard be fired. In a Thursday editorial, the newspaper apologized for running the cartoon and suspended Woolard. On Friday, in a written statement appearing on the social networking website Facebook, Woolard himself apologized to anyone who was hurt by the cartoon.

He explained that the intent of the cartoon was to imply that "were anyone to have a food fight during a severe famine, these seemingly inedible objects would be used as 'food.' This surrealistic hypothetical situation invites the reader to realize that what initially appears to be a joke reflects a sobering reality. For too many people in the world, this is what they have to eat to survive."

On the Sunday following the publication of the cartoon, the five-member 2007 managing board of the *Cavalier Daily* summoned Woolard to a meeting at which they informed him that the paper could no longer function properly with him on the staff. "They left me no choice but to resign," said Woolard. The 2007 managing board offered no explanation as to why the two of its members who had approved the cartoon for publication did not also resign. In response to its nomination for a Jefferson Muzzle, a member of the 2007 managing board stated that the issue was not censorship but a personnel issue and, out of deference to the privacy of Woolard and others no longer on the paper's staff, would not comment further. (It should be noted that each January the *Cavalier Daily* elects new editors to every single position on staff and this Muzzle therefore is awarded solely to the 2007 [or 118th] managing board and not the current staff of the paper.)

A free press obviously has to include the right of editorial control over what to report and how it is reported. If Imus and Woolard had been fired because their expression was contrary to the editorial policies of their respective employers, no Muzzles would be awarded. But in both firings it appears clear that the actions were taken not because of the substance of the public's reaction, but the amount of it. In other words, CBS radio, MSNBC, and the *Cavalier Daily*'s regret about the incidents rose in proportion to how many people expressed criticism, not in proportion to how they actually assessed the merits of that criticism.

In the case of Imus, neither CBS radio nor MSNBC utilized the delay buttons at their disposal to prevent the Rutgers comment from being broadcast. The failure to do so evidences that CBS radio and MSNBC did not believe the comments were out of the norm for Imus. Similarly, in the case of Woolard, controversy surrounding his cartoons was nothing new. The previous fall, a cartoon of his appearing in the *Cavalier Daily* received national attention and criticism because many deemed it to be sacrilegious. Indeed, during that earlier incident,l the 2007 managing board reiterated its policy that at least two members of the managing board review a cartoon before publication. That policy was followed in the case of "Ethiopian Food Fight" and apparently the two reviewing board members found no reason to prevent the cartoon from appearing in the April 4 edition.

A central value of the First Amendment's guarantee of freedom of the press is to insure that the press need not fear reporting or commenting on the controversial issues of the day. As such, public controversy and criticism over press content is to be expected, if not the norm. When adverse public reaction is the primary factor in determining press content, one must question how "free" the press truly is. A democratic society needs a free press willing to stand up to public criticism. It is hoped that the 2008 Jefferson Muzzles will serve as a reminder of this principle to CBS radio, MSNBC, and the 2007 managing board of the *Cavalier Daily*.

9) Valdosta (Ga.) State University President Ronald M. Zaccari

For "withdrawing" undergraduate student T. Hayden Barnes from Valdosta State University because of his novel protest of the university's plans to construct two parking garages on the campus, a 2008 Jefferson Muzzle goes to Valdosta (Ga.) State University President Ronald M. Zaccari.

Student protests against campus construction projects are seldom welcome to the university administration, especially when they include a personal critique of the president. But such tension reached new heights (or depths) at Valdosta State University in the spring of 2007. Junior T. Hayden Barnes had long been active in environmental issues, and from that perspective became especially opposed to the campus's planned construction of two parking decks. He also was troubled by the proposed financing of the project, which would commit some $30 million in student fees.

Barnes's protest began in conventional fashion—a series of fliers detailing what he considered environmentally preferable responses to the parking needs. When he learned that the university's president, Ronald M. Zaccari, was upset by the fliers, Barnes removed them and apologized to the president. But his protest persisted in different forms—a letter to the student newspaper, contacts with members of the State Board of Regents, and especially by posting critical comments on his Facebook profile.

It was the Facebook entry that apparently provoked President Zaccari to declare that Barnes posed a "clear and present danger" to the campus, and to order that he be "administratively withdrawn" for his own safety and that of the university community. Especially offensive to President Zaccari was Barnes's use of his image adorned by a plan for one of the garages and the words "S.A.V.E. [a student environmental group]—Zaccari Memorial Parking Garage." Unaware that campus buildings could be named only for deceased persons, Barnes was not implicitly calling for the actual demise of the president but only his disrespect. The administration also expressed concern that Barnes had included on his Facebook entry an article on the very recent massacre at Virginia Tech.

When Barnes's campus appeal for reinstatement was rejected, he filed suit in federal court and sought relief from the Georgia Board of Regents. In mid-January 2008, that

(continued on page 122)

censorship dateline

libraries

Yorba Linda, California

When Patricia Cosby's twelve-year-old daughter brought home the novel *Prep* from school, she was horrified to find out what her daughter was reading. "It was really like reading something that was pornographic," Cosby said. Her daughter found the book—which is part of an accelerated reading program—in the Heritage Oak School library in Yorba Linda.

"When the book first came home I couldn't sleep the first night," Patricia Cosby said. "I just kept waking up and I just had this sick feeling in the pit of my stomach."

Prep, by Curtis Sittenfeld, is a coming-of-age tale about an Indiana teenager who wins a scholarship to a prestigious boarding school. It has won awards and has been well-reviewed, but several passages in it border on some peoples' idea of the pornographic. One of the passages in the book reads: "I wrapped my legs around his waist. He jerked against me so strongly that I thought he might tear through my underwear."

The book was on a list of recommendations sent to schools all over the country that use a program called accelerated reading from Wisconsin-based Renaissance learning. The company says *Prep* is appropriate for ninth graders, but it also says the reading level is appropriate for twelve-year-olds.

Greg Cygan, principal of Heritage Oak School, immediately pulled the book off the shelves. He says he blames Renaissance for putting the book into the hands of young children at his school. "I think most people in the K–12 group would stand behind me and say it shouldn't have made the list. But if it was on the list, clearly Renaissance has a responsibility to put some sort of a warning on the book. And then the school library can make a decision whether or not they want to have that."

Renaissance executives denied responsibility, saying, "Ultimately to use or not use a book is based on professional judgment about the book's appropriateness and is the sole responsibility of librarians, teachers and/or parents." Renaissance said it will neither remove *Prep* from its recommended reading list nor change the age group for which it is deemed appropriate. Reported in: foxnews.com, February 22.

Washington, D.C.

The Army has shut down public access to the largest online collection of its doctrinal publications, a move criticized by open-government advocates as unnecessary secrecy by a runaway bureaucracy. Army officials moved the Reimer Digital Library behind a password-protected firewall on February 6, restricting access to an electronic trove that is popular with researchers for its wealth of field and technical manuals and documents on military operations, education, training and technology. All are unclassified, and most already are approved for public release.

"Almost everything connected to the Army is reflected in some way in the Reimer collection," said Steven Aftergood, director of the Project on Government Secrecy at the nonprofit Federation of American Scientists. "It provides the public with an unparalleled window into Army policy. It provides unclassified resources on military planning and doctrine."

Aftergood, a daily user of the library until he was shut out by the new firewall, said the collection offers specialized military manuscripts that do not appear on the shelves of local libraries. These include documents on the Army's use of unmanned aircraft; tactics and techniques for the use of nonlethal weapons; a field manual for non-engineers on the fundamentals of flight; and a manual on working dogs in the military.

"All of this stuff had been specifically approved for public release," Aftergood said. "I think it's a case of bureaucracy run amok. And it's a familiar impulse to secrecy that needs to be challenged at every turn."

For years, open-government advocates have complained about the Bush administration's penchant for confidentiality, from the White House's long-standing refusal to release lists of presidential visitors to the secrecy surrounding the administration's warrantless wiretapping program and Vice President Cheney's energy policy task force.

In 2006, the National Archives acknowledged that the CIA and other agencies had withdrawn thousands of records from the public shelves over several years and inappropriately reclassified many of them. Early in 2002,

then-Attorney General John D. Ashcroft issued a memo urging federal agencies to use whatever legal means necessary to reject Freedom of Information Act requests for public documents.

Army officials said they were compelled to limit access to the Reimer library site to comply with Department of Defense policies that call for tightening the security of military Web sites and to keep better track internally of who is accessing them and why.

"You've got to be a member of the military or a Department of Defense worker to have access to it," and not all of them can get in, said Ray Harp, a spokesman for the Army Training and Doctrine Command, which oversees and maintains the Reimer collection. "They did this to make sure they are in line with the current DOD and DA [Department of the Army] information assurance policies."

Harp said some of the documents in the collection still are available to the public through the Army Publishing Directorate. That is not good enough, according to Aftergood, who said many of the most important documents on that site are password-protected, as well, despite having been cleared for public release. His group recently filed a FOIA request for all of the unclassified documents in the Reimer collection in order to replicate the archive on its own publicly accessible website.

"They can configure Army Web sites however they like," Aftergood said. "What they cannot do is to withhold information from the public that is subject to release under the FOIA. . . . What we really want to do is to persuade them to adopt a reasonable policy of openness, not to provide an alternative—unless we have to." Reported in: *Washington Post,* February 21.

New Tampa, Florida

The parents of an eleven-year-old student at the Hillsborough County School District's Turner Elementary School in New Tampa announced in mid-March that they would seek the removal of two media center novels that contain the *N*-word: *The Land,* by Mildred Taylor, and *The Starplace,* by Vicki Grove. "I want them pulled," Darryl Brown, a doctoral student in education at the University of South Florida, said. "There needs to be an examination of these words that elementary school kids are reading."

Brown and his wife Alytrice said they originally expressed their concern to the assistant principal in January after their daughter Ashyaa told them she had found the offensive word in *The Starplace,* a story about an interracial middle-school friendship in 1960s Oklahoma. However, the family was not advised how to file a challenge until two months later, Brown explained, telling how he called again in March because another student who was reading *The Land* directed the epithet against Ashyaa.

On the second occasion, Turner media specialist Donna Simonetti-Tedesco phoned him to explain how to challenge materials, but used the *N*-word in talking about the books. She apologized, but "it was a lackluster apology," Brown told the newspaper, describing the librarian's word choice as "like pouring salt on a wound." Brown added that he subsequently wrote the principal asking that Simonetti-Tedesco be suspended.

Mildred Taylor, who is African American, has written in an afterward to *The Land,* which is a story about a former slave during Reconstruction, that she deliberately used the language "that was spoken during the period, for I refuse to whitewash history." In a March 18 interview on twenty-four-hour Florida cable TV station Bay News 9, Brown disagreed, calling such an explanation "a moot point [and] a politically savvy way of trying to cover something up."

"I'm calling for an investigation and examination of what books are in the elementary school system," Brown said. "Why is it appropriate for this type of language to be in elementary school books?"

The Land follows a man who is the son of a prosperous white landowner and a former slave. The book was a 2003 Coretta Scott King Author Award recipient. "Taylor makes an exemplary contribution to chronicling the African-American experience with her finely developed characters and well-rounded storyline," award committee chairwoman Fran Ware said.

The Starplace deals with a friendship in the 1960s between a white teenager in an Oklahoma town and a black teen whose family is new to the area. "This is a wonderful look at the time just after the Supreme Court decision that was supposed to make segregation history . . . highly recommended," a review by *Children's Literature Review* said. Reported in: *American Libraries* online, April 11; *Tampa Tribune,* March 17.

Nampa, Idaho

In response to a third challenge by resident Randy Jackson, the Nampa Public Library board has relocated *The New Joy of Sex* and *The Joy of Gay Sex* to the director's office so the titles can only be accessed by patrons who specifically request them.

The board voted 3–2 to move the books at its March 10 meeting. The two new members who have joined the board since it voted to keep the books in general circulation in 2006 both supported moving the books to the director's office.

While the board declined Jackson's request to remove the books entirely, he declared himself "very pleased" and called the decision "a huge victory for our community."

Thirty-one Nampa residents testified at the board meeting, sixteen in favor of removing the books and fifteen in favor of retention. The majority of those in favor of keeping the books argued that pulling them from the shelves was censorship.

"To me a library is a place of education and enlightenment," resident Alice Heiggs said. "To take away the books is to make it a dark place."

"I thank the library board for having these books for the kids who do need it," Ken Brown of Nampa said. "There are some out there."

Those in favor of removing the books argued that they are too graphic for children and have no place in a family library. "As a citizen of Nampa, all I want from you today is to take the books off the shelves, so children can have a safe place to learn like I did years ago," Charla Tedeski said.

"Discretion and moral decency does not equate to moral censorship," Ted Wheeler said. "As a taxpayer on four Nampa properties, I do not want my money spent this way."

Rosie Reilley, chair of the Nampa Library Board, said she was not happy with the decision and believes that it is censoring material. Assistant director Camille Wood said the Joy of Sex book series has been in circulation for fifteen years and is owned by more than five hundred libraries including those in Boise and Eagle. Wood said *The Joy of Gay Sex* was added to Nampa's collection in 2005 and was checked out seven times in the last year. Reported in: *American Libraries* online, March 14; *Idaho Statesman,* March 11.

Waltham, Massachusetts

A novel by Alice Sebold kept in the John W. McDevitt Middle School library will remain there, despite a request from a parent to remove it. But it will be kept in the faculty rather than in the student section, and students wishing to read it must ask permission from the librarian, who will determine if the child is mature enough. School Committee member Margaret Donnelly identified the book as *The Lovely Bones* and said a parent of a McDevitt student had complained that its content was too frightening for middle school students. The School Committee's ad hoc committee voted, 5–1, to keep the book in the library, said Donnelly.

The book tells the story of a raped and murdered girl as she watches her loved ones' and her murderer's lives from heaven. Reported in: *Boston Globe,* March 2.

Duplin County, North Carolina

A family in Duplin County was up in arms after seeing the book their fourth grader brought home from the school library. *Fallen Angels,* by Walter Dean Myers, is on the accelerated reading list at Chinquapin Elementary school. The family of the fourth grader said the book is littered with hundreds of expletives, including the *N*-word, and *F*-word, and slang terms for homosexuals. The family wants the book removed from the library shelves.

The Duplin County School system said it wasn't aware of the language inside the book. It says policies are in place where the family can file a complaint and it will then be reviewed by a committee. Reported in: witntv.com, February 29.

Leavenworth, Washington

Alice on Her Way will remain in the library at Icicle River Middle School in Leavenworth, but with borrowing privileges restricted to students who have parental consent. Parent Dave Winters objected to Phyllis Reynolds Naylor's novel, part of the oft-challenged Alice series, due to its depiction of sexuality. Accepting the recommendation of a review committee, the school board unanimously decided March 24 to retain the book with restrictions, believing that it would be beneficial for older middle school students.

"We kind of balanced those two things and struggled with that for a while" before reaching the compromise solution, District Librarian John Mausser said. "I'm not totally satisfied, but at least we raised awareness," Winters responded.

In *Alice on Her Way,* fifteen-year-old Alice gets involved in a new relationship, which is contrasted with those of two other girls, one in an abusive relationship and another who regrets having oral sex with a boy she barely knows.

The book is the seventeenth in a popular series that follows Alice as she grows older. Winters said the school also carries at least one "Alice" book after *Alice on Her Way,* which was even more inappropriate.

Mausser said *Alice on Her Way* was "on the edge" and told the board he will review books in the series after *Alice on Her Way*.

The board's decision came six weeks late, according to a school district policy, which says a decision will be delivered within ten days. The delay was "partly because board policy calls for this instructional committee to be a standing committee to meet monthly and we don't have that," Mausser told the board before reading the committee's recommendation. "There are a lot of reasons it took longer and he (Winters) never objected to the amount of time it took us to come to this recommendation and I appreciate that." The board also spent time to create new criteria for the committee to review the book because the policy was too vague.

One other book, Gary Paulsen's *Harris and Me,* has been similarly restricted at the school for almost a decade. Parents challenged the book's use during classroom reading because of "two cuss words," librarian Sharon Waters said. Waters said *Harris and Me* is still checked out under the restricted checkout system and parents typically give consent by phone. Reported in: *American Libraries* online, March 28; *Wenatchee World,* March 26.

schools

Morganton, North Carolina

A book that has faced controversy since it was released in 2003 may be removed from Burke County schools. *The*

Kite Runner, by Khaled Hosseini, is the story of an Afghan boy and his friendship with his father's servant. *The Kite Runner* also depicts a sodomy rape in graphic detail and uses vulgar language, said school board member Tracy Norman. She said that makes it inappropriate for study in William Martin's tenth-grade honors English class at Freedom High School.

Norman said she would be embarrassed to read a passage from the book because of its vulgarity, so a tenth grade class certainly should not read it. "It makes you sick to the pit of your stomach when you read that a grown man is standing there in front of another grown man molesting a little boy," Norman said. "Why do high school students need to read that?"

Although there is a procedure for challenging books, Norman said she felt like the board has the power to remove the book without going through the process. Board attorney Sam Aycock warned that might be a problem if the board is called on to act in a judicial function in the matter, but he said it is possible for the board to override the process. Normally, if a parent or community member challenges a book, the book is reviewed by a school committee. If the committee does not remove the book, the challenger may appeal to a system-wide committee. If that committee still does not feel the book should be removed, the issue comes before the school board.

If the committee does decide to remove the book, any person can challenge that decision, as well. Even if the process were followed, students can keep reading the book until the decision is made to remove it. Superintendent David Burleson said he believes the class in question has already finished the book.

Board member Buddy Armour asked if there was any redeeming value to the book, and Norman said the book has a very good storyline but the redeeming value doesn't outweigh the impact the book can have.

She said students are not allowed to use vulgar language and staff are supposed to provide positive methods of instruction. Norman said studying the book sends the wrong message and is in violation of school policy. It is, however, not in violation of the media policy, which prohibits vulgar or obscene audio or video material.

Sam Wilkinson said while he agrees with Armour about academic freedom, he feels that the book is more suited to a college curriculum.

David Barnard said redeeming value is subjective, and that the book's acclaims should not be taken into account, such as its Book of the Year award from the *San Francisco Chronicle*.

"That in itself tells you it must be a pretty wacko book because that's a pretty wacko center of the universe," Barnard said. Barnard also wanted to know why the teacher did not have the book reviewed before using it.

Norman said she did not think that was the major issue. "I'm not out to lynch a teacher," she said. "I just don't want to repeat this in the future." Reported in: *Morganton News-Herald,* February 19.

Berkeley County, South Carolina

When Jill Hunt's thirteen-year-old daughter told her there were some "bad words" in a book she had been assigned to read at Hanahan Middle School, the mother scanned the first few pages and didn't have a problem with it. When her daughter put the book in front of her face and told her to look at the passage that her teacher asked her to read out loud in her eighth-grade English and language arts class, Hunt couldn't believe what she saw.

Upon further inspection of the book, *Go Ask Alice,* Hunt found blatant, explicit language using street terms for sex, talk of worms eating body parts, and lots of curse words taking God's name in vain. The anonymously written 1971 book is about a fifteen-year-old girl who gets caught up in a life of drugs and sex before dying from an overdose. Its explicit references to drugs and sex have been controversial since it was first published, with conservative parents and activists pushing for the book to be banned from school libraries and curricula for years.

Hunt went straight to the school's principal Robin Rogers on February 21 to complain. The next day Berkeley County School District Superintendent Chester Floyd yanked the book as an instructional tool.

"I definitely think that we don't need to have that kind of language in our methodology," said Floyd, who said he never has read the book but was read excerpts from it by Archie Franchini, administrative supervisor for secondary schools in Berkeley County. "The meaning might be well. However, there has to be appropriate literature for our young folks. It's not coming back as an instructional material while I'm superintendent unless my decision is overturned. I don't anticipate that."

Rogers sent a letter home to the parents of the students in the two classes using the book, saying the teachers obtained an instructional unit for the book at a Southern Regional Education Board conference on helping eighth graders with the transition to ninth grade. SREB is the organization that sponsors "Making Middle Grades Work," the middle school reform model adopted by Berkeley schools.

"The book contains some controversial issues that our district administration has decided is inappropriate for our eighth-graders," Rogers said in the letter. "The decision has been made to end the class instruction of the book effective February 22." Poetry and short stories will be taught instead, he said. The teachers will not be reprimanded for using the book because it was approved as instructional material by an administrator at the school.

Hunt said she understands what the book is trying to convey about the dangers of drugs and sex, but she thinks the school should find another way to get the message across rather than requiring her child to read out loud words

she is not allowed to speak at home. "My daughter was embarrassed" because she had to read the offensive passages out loud, Hunt said.

"We are ecstatic that the superintendent came to this decision," Hunt said. "We hope the rest of the superintendents in the state will follow his lead. We will not stop until the state of South Carolina has banned this book. No child in middle or high school should be reading this book," she added. "There are more ways to get this point across than to have this filth taught to our kids. It's pornographic material in my opinion. It's a shame that the only time God is allowed in school is when 'damn' is after it." Reported in: *Charleston Post and Courier,* February 23.

Vancouver, Washington

Vancouver Public Schools may be the first district in the nation to not allow Scholastic Book Clubs to sell its merchandise through its schools. School officials said that district policy prohibits them from promoting for-profit businesses, but that's not what triggered the conversation in the first place.

In late November, a disgruntled Vancouver woman wrote an e-mail to Scholastic, complaining about its inclusion of the children's book, *The Golden Compass*. The book has been perceived by some Christian groups as being anti-Christian. The author, Philip Pullman, has said that he was "trying to undermine the basis of Christian belief" set forth by author C. S. Lewis.

"(The woman) objected on one basis, but what it did was raise a whole other different issue," Vancouver Public Schools' legal counsel Kathryn Murdock said. The decision to no longer promote Scholastic Book Clubs—a step Scholastic Book Clubs President Judy Newman said by e-mail that she didn't know of other school districts having taken—met resistance from parents and teachers.

"It was kind of like we were taking away apple pie," Murdock said.

The school district handed off the responsibility of Scholastic Book Clubs sales to parent teacher associations, though parents and teachers say it has highlighted the divide between rich and poor schools. Teacher-librarian Lori McKinley, who splits her time between Franklin and Fruit Valley elementary schools, said the change has had a huge impact on Fruit Valley, a school with three quarters of its students on free or reduced lunch.

"I met with the PTA at Fruit Valley, and it's not for lack of wanting, but they're all working parents, so they can't come in during the working hours," McKinley said. At Franklin, she said, "parents there have the time during the day to come in and do things for the school."

Still, Franklin parents chose not to sell Scholastic Books because the Parent Teacher Association may not have enough volunteers. Rosalind Pirkl, Franklin Elementary PTA president, said the PTA polled teachers and found it would be too great an effort to make the switch. And she didn't like the idea of posting sales on the school's website, as Chinook Elementary has done, because "it divides the haves and the haves not."

"You would run into problems with families without credit cards and computer access," Pirkl said. Teacher-librarian McKinley said that new teachers build their classroom libraries with points earned from Scholastic sales in their classrooms. Those points turn into free books. "They have good sales—99 cents, $2.95," she said. "It's really hard to find those kind of rates anywhere else."

That may be, but Vancouver school district officials don't want to burden students with take-home fliers from businesses. "If we allow Scholastic Book Clubs, there's no reason we couldn't allow any other commercial endeavor," Murdock, the legal counsel, said. Reported in: *Vancouver Columbian,* February 14.

colleges and universities

Russellville, Arkansas

After the Virginia Tech murders a year ago, Yale University banned the use of stage weapons in a student theatrical production—infuriating actors and educators who believed audience members could distinguish drama from real life. After a few days of ridicule, Yale backed down. A year later, after another gun tragedy, college officials are still trying to figure out how to make their campuses safe—and theater still is a target.

A student production of *Assassins,* the award-winning musical, was to have premiered February 23 at Arkansas Tech University, but the administration banned it—and permitted a final dress rehearsal (so the cast could experience the play on which students had worked long hours) only on the condition that wooden stage guns were cut in half prior to the event and not used. *Assassins* is a musical in which the characters are the historic figures who have tried to kill a U.S. president.

Robert C. Brown, Arkansas Tech's president, issued a statement explaining the decision as follows: "All of us have a healthy respect for the freedom of artistic expression that college theater represents, and all of us agree that out of respect for the families of those victims of the tragedies at Northern Illinois University and Virginia Tech, and from an abundance of caution, it is best at this time not to undertake a campus production that contains the portrayal of graphically violent scenes."

While faculty members involved in the program declined to comment on their views, others said privately (citing fear of offending administrators) that they viewed the decision as an overreaction and one that sent the wrong message about theater, the role of art, and free expression. The local newspaper reported that the administration was so concerned about the production that reporters were barred from

the dress rehearsal. Adding to the anger of many on the campus is that the film *American Gangster,* featuring plenty of blood and violence—and none from singing historical figures—was screened on campus that week. Why, many wanted to know, was musical theater being singled out?

Further frustrating faculty members, there were reports of gun shots—and a recent shooting injury—at parties organized by Arkansas Tech students, but the students organizing those parties were reportedly football players, not thespians. Some questioned why what they saw as a false concern (fake guns in drama) was getting attention, as opposed to what they viewed as more serious problems. Others said they viewed an order to stop a play as a violation of academic freedom.

One professor who asked not to be identified said "there seems to be a real double standard—this just feels wrong."

Susie Nicholson, a spokeswoman for the university, said the play could yet be rescheduled, so it was not really being called off. But others on campus noted that student productions, relying on the time of students who have a range of commitments, can't just be pushed back a few months. Asked who made the decision to call off the play, said "the administration," but then added that the decision had been made "in conjunction" with some faculty members.

Nicholson said the decision did not limit artistic expression, noting that the president's statement included his support for artistic freedom. She said she did not know if any of the officials who made the decision had ever seen a production of *Assassins,* but said they were concerned about the gunshots that are part of the play and might be heard outside the auditorium.

Ardith Morris, a professor of theater who was directing the production, said she could not comment on her feelings about the decision, and could only answer questions of fact. She said a total of sixty students had been involved in the production—counting actors, the orchestra, and technical crew. When the decision was made to call off the production, she said she asked if the president wanted to brief the students, but that offer was declined in favor of her doing so. She said the news brought "tears and outrage" from students.

Morris has taught and directed student productions for twenty-six years at Arkansas Tech. Asked if she had ever called off a show previously, she said, her voice breaking, "never—including the show that opened the week my husband passed away." Even facing a personal loss, she said, "theater people" wouldn't call off a production. "It's just not what we do. Theater is who we are—it's how we view the world and realize ourselves as people."

Kurt Daw, dean of fine and performing arts at the State University of New York at New Paltz, and a past president of the Association for Theater in Higher Education, said he was disappointed to hear about a college refusing to let a play go on as scheduled. Daw said he would understand Northern Illinois University not wanting such a show right now, but that beyond the immediate vicinity, administrators should recognize "the theater's capacity to heal and to make us think." He noted that while *Assassins* is about assassins, it is by no means a pro-violence play but a work that "calls on us to think about the violence in our culture and what the sources are for it."

Theater productions appear "more prone to censorship" on campuses than are books or professors' writing, Daw said. He thinks this is because "what's powerful about theater is its immediacy." But to Daw, that's no reason to keep theater away from students—even in difficult times. "I think academic freedom absolutely covers artistic events the same way it covers writing," he said. Some theater may frighten those who watch it, he said, but that reaction may be entirely the point. "I'm in favor of trusting audiences." Reported in: insidehighered.com, February 22.

Troy, New York

Rensselaer Polytechnic Institute announced March 10 that it would not permit the re-opening of a controversial video exhibit the university suspended the previous week. RPI's announcement—both the decision and the way it was explained—infuriated the artist and art professors, who moved the video to a gallery off the campus. There, students who are active in the College Republicans at RPI followed them to picket and protest outside, while others streamed in to see the show.

At issue is a work called "Virtual Jihadi," which is the latest in a series of video games inspired by the Iraq war. In the first, "Quest for Saddam," players tried to capture the deposed and since executed leader of Iraq. That game inspired an al Qaeda version called "The Night of Bush Capturing," which features players trying to kill the American president. In "Virtual Jihadi," a player based on the life of the artist—Wafaa Bilal, an artist-in-residence at RPI—becomes a character in a game based on the al Qaeda version.

Bilal, who teaches at the Art Institute of Chicago, was born in Iraq and sees the work not as a call to arms against President Bush, but as a critique of the situation Iraqis find themselves in—where they dislike the American occupation of their country and feel pressured to support terrorism. Bilal stressed in two interviews that he does not support terrorism, but believes it is important for those who view his art to understand how U.S. policies encourage people in Iraq to support terrorists.

RPI temporarily shut down the exhibit, pending a review. The exhibit had been attacked by the College Republicans and RPI officials said they needed more information about it. The university's March 10 statement said the exhibit could not re-open at the institute. The statement said the decision "was based on numerous concerns, including, in particular, two characteristics of the video game in the exhibit, as affirmed by the artist: first, that the

video game in the exhibit is derived from the product of a terrorist organization; and second, that the video game is targeted to and suggests the killing of the president of the United States."

The statement—issued in the name of William N. Walker, vice president for strategic communications and external relations—continued: "Rensselaer fully supports academic and artistic freedom. We respect the rights of all members of the Rensselaer community and their guests to express their opinions and viewpoints. However, as stewards of a private university, we have the right and, indeed, the responsibility, to ensure that university resources are used in ways that are in the overall best interests of the institution."

Bilal, in an interview after the statement was released, called it "wrong and misleading." In particular, he objected to the statement that he had "affirmed" that the art suggests killing the president. Bilal said that the game portrays characters doing that, but does not suggest that as a course of action. "I am making a social statement about terrorism, not supporting terrorism," he said.

Igor Vamos, who teaches art at RPI, said that by the logic of the RPI statement, "they would have to ban every Tom Clancy novel or the movie *United 93* because those feature terrorist acts. "This is a massive overreaction," he said. "When a writer or actor plays a role, their beliefs don't have to match," he said, adding that RPI administrators should surely know that.

Further, Vamos said in light of the fact Bilal is known as a respected artist, as a person who fled Iraq under Saddam Hussein, and is a well regarded teacher, the RPI statement is "completely irresponsible and a travesty on a personal level." By implying that Bilal supports the assassination of the president—when he does not—RPI has made a "baseless accusation" that could leave Bilal vulnerable to being physically or professionally attacked.

"This is all just shockingly irresponsible on a human level," he said.

Vamos is a board member of the Sanctuary for Independent Media, an independent arts space near RPI, but off of its campus. The center invited Bilal to install his video art there, and he did so, attracting a supportive crowd inside and College Republicans marching outside, holding signs that accused the exhibit of supporting terrorism. The Republican leader in the county legislature also called for the show to be shut down. Reported in: insidehighered.com, March 11.

Internet

Denver, Colorado

Want to browse *Vanity Fair* magazine on the Denver airport's free Wi-Fi system? Sorry. You'll have to buy it at the newsstand, because Denver International Airport's Internet filter blocks *Vanity Fair* as "provocative." Nor can you get to the popular gossip column perezhilton.com on the Denver airport's Wi-Fi signal. Or the hipster-geek favorite boingboing.net. Or the *Sports Illustrated* swimsuit photos, even though the magazine's bare-breasted cover shot is on prominent display at airport stores, right next to *Penthouse* and *Hustler*.

Airport officials say they are erring on the side of caution in blocking access to certain sites through the free Internet browser offered to travelers. They say they're using prudent judgment in a public, family-friendly atmosphere. But others see it as a form of cyber censorship that taints Denver's self-portrayal as a progressive city.

"Give people some credit," said David Byrne, founder of the legendary art-rock band Talking Heads, who was blocked from boingboing.net while connecting through Denver to an Aspen workshop last month. "And the more credit you give them, the more they respond. It's just trusting people's discretion."

Critics, like boingboing.net editor Xeni Jardin and others, point out that Denver uses the same kinds of software filters employed by the repressive regimes of the Sudan and Kuwait. Jardin is tired of her tech-update site getting blocked by private and government filters just because it occasionally posts respected artworks that might include nudity.

"This gets to the heart of what the Internet is all about, and whose responsibility it is," said Jardin, who is based in California. "It seems particularly unfortunate that something as symbolic as the city's airport, a gateway to culture, commerce and the flow of ideas, would be blocked in such a fundamental way.

Airport spokesman Chuck Cannon said the telecom office decided to use Webwasher's filtering system when it went from a paid service to free public Wi-Fi in November. Officials preferred to deal with infrequent blocking complaints rather than angry parents whose children walked by a screen showing pornography, Cannon said.

With more than four thousand Wi-Fi connections a day, the airport has received only two formal blocking complaints so far, he said. The filtering software appears to be blocking less than 1 percent of 1.7 million Web page requests a day.

As for *Sports Illustrated* being available at newsstands but not on Wi-Fi, Cannon said, "That's a little different than pornography, though I guess others may disagree." Reported in: *Denver Post,* March 5.

Bellevue, Washington

Steve Marshall is an English travel agent. He lives in Spain, and he sells trips to Europeans who want to go to sunny places, including Cuba. In October, about eighty of his websites stopped working, thanks to the U.S. government.

The sites, in English, French, and Spanish, had been online since 1998. Some, like www.cuba-hemingway

.com, were literary. Others, like www.cuba-havanacity.com, discussed Cuban history and culture. Still others—www.ciaocuba.com and www.bonjourcuba.com—were purely commercial sites aimed at Italian and French tourists.

"I came to work in the morning, and we had no reservations at all," Marshall said. "We thought it was a technical problem."

It turned out, though, that Marshall's websites had been put on a Treasury Department blacklist and, as a consequence, his American domain name registrar, eNom Inc., had disabled them. Marshall said eNom told him it did so after a call from the Treasury Department; the company, based in Bellevue, said it learned that the sites were on the blacklist through a blog.

Either way, there is no dispute that eNom shut down Marshall's sites without notifying him and has refused to release the domain names to him. In effect, Marshall said, eNom has taken his property and interfered with his business. He has slowly rebuilt his Web business over the last several months, and now many of the same sites operate with the suffix .net rather than .com, through a European registrar. His servers, he said, have been in the Bahamas all along.

Marshall said he did not understand "how Web sites owned by a British national operating via a Spanish travel agency can be affected by U.S. law." Worse, he said, "these days not even a judge is required for the U.S. government to censor online materials."

A Treasury spokesman, John Rankin, referred a caller to a press release issued in December 2004, almost three years before eNom acted. It said Marshall's company had helped Americans evade restrictions on travel to Cuba and was "a generator of resources that the Cuban regime uses to oppress its people." It added that American companies must not only stop doing business with the company but also freeze its assets, meaning that eNom did exactly what it was legally required to do.

Marshall said he was uninterested in American tourists. "They can't go anyway," he said.

Peter L. Fitzgerald, a law professor at Stetson University in Florida who has studied the blacklist—which the Treasury calls a list of "specially designated nationals"—said its operation was quite mysterious. "There really is no explanation or standard," he said, "for why someone gets on the list."

Susan Crawford, a visiting law professor at Yale and a leading authority on Internet law, said the fact that many large domain name registrars are based in the United States gives the Treasury's Office of Foreign Assets Control, or OFAC, control "over a great deal of speech—none of which may be actually hosted in the U.S., about the U.S. or conflicting with any U.S. rights."

"OFAC apparently has the power to order that this speech disappear," Professor Crawford said.

The law under which the Treasury Department is acting has an exemption, known as the Berman Amendment, which seeks to protect "information or informational materials." Marshall's websites, though ultimately commercial, would seem to qualify, and it is not clear why they appear on the list. Unlike Americans, who face significant restrictions on travel to Cuba, Europeans are free to go there, and many do. Charles S. Sims, a lawyer with Proskauer Rose in New York, said the Treasury Department might have gone too far in Marshall's case.

"The U.S can certainly criminalize the expenditure of money by U.S. citizens in Cuba," Sims said, "but it doesn't properly have any jurisdiction over foreign sites that are not targeted at the U.S. and which are lawful under foreign law."

Rankin, the Treasury spokesman, said Marshall was free to ask for a review of his case. "If they want to be taken off the list," Rankin said, "they should contact us to make their case."

That is a problematic system, Professor Fitzgerald said. "The way to get off the list," he said, "is to go back to the same bureaucrat who put you on."

Last March, the Lawyers' Committee for Civil Rights issued a disturbing report on the OFAC list. Its subtitle: "How a Treasury Department Terrorist Watch List Ensnares Everyday Consumers." The report, by Shirin Sinnar, said that there were 6,400 names on the list and that, like no-fly lists at airports, it gave rise to endless and serious problems of mistaken identity.

"Financial institutions, credit bureaus, charities, car dealerships, health insurers, landlords and employers," the report said, "are now checking names against the list before they open an account, close a sale, rent an apartment or offer a job."

But Marshall's case does not appear to be one of mistaken identity. The government quite specifically intended to interfere with his business. That, Professor Crawford said, is a scandal. "The way we communicate these days is through domain names, and the Treasury Department should not be interfering with domain names just as it does not interfere with telecommunications lines." Reported in: *New York Times,* March 4.

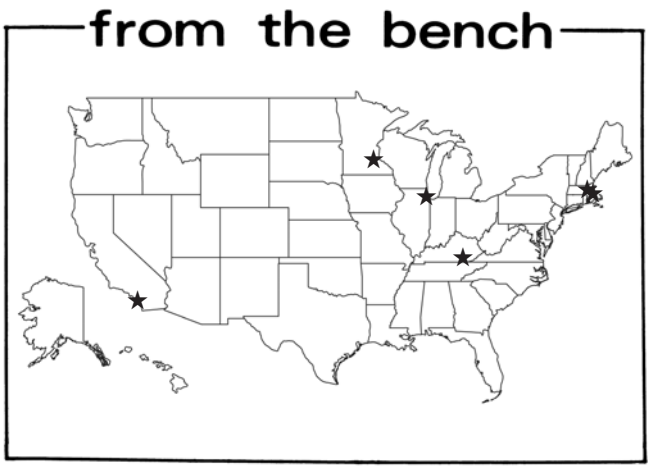
foreign

Buxton, England

A Buxton mother has expressed her disgust after discovering a book containing pornography freely available in the town's library—recently reopened after a refurbishment to make it more child friendly.

Julie Keeling runs the Grapevine Community Cafe on Buxton Market Place and was told about the book, called *Dirty Fan Male,* by one of her customers after he discov-

(continued on page 126)



U.S. Supreme Court

The U.S. Supreme Court declined February 18 to consider whether plaintiffs who believed they had been spied on without a court order could challenge the legality of such surveillance without tangible proof—even if the proof is classified as a state secret. The rejection of the *ACLU* v. *NSA* appeal came two days after the expiration of the Protect America Act, which from August 2007 until February 16 legalized warrantless eavesdropping on phone and Internet communications to U.S. homes, workplaces, libraries, and elsewhere from foreign locations if the government suspects that the discussion involves support of terrorism.

ACLU v. *NSA* was the July 2007 ruling by the U.S. Court of Appeals for the Sixth Circuit. The American Civil Liberties Union filed suit shortly after the *New York Times* revealed in December 2005 the existence of the National Security Agency's post–September 11 Terrorist Surveillance Program. Plaintiffs included prominent attorneys, academic scholars, and national nonprofit organizations.

Jameel Jaffer, who directs the ACLU's National Security Project, reacted by saying, "It shouldn't be left to executive branch officials alone to determine what limits apply to their own surveillance activities and whether those limits are being honored." Steven R. Shapiro, legal director of the ACLU, stated February 19 that the high court's "unwillingness to act makes it even more important that Congress insist on legislative safeguards that will protect civil liberties without jeopardizing national security."

Congress was set to tackle that responsibility when legislators returned from break February 25 and considered how to reconcile the House and Senate versions of a bill revamping the Foreign Intelligence Surveillance Act of 1978. In answer to the House-passed RESTORE Act, which denied retroactive immunity sought by telecommunications companies for initiating extensive wiretaps as early as 2001 at the behest of the Executive Branch, the Senate approved a version containing an immunity provision. "There's no compromise on whether these phone companies get liability protection," President Bush said. "The American people understand we need to be listening to the enemy."

Whether lawmakers grant immunity will directly impact several dozen ongoing lawsuits against telecommunications firms and the government, all of which are before U.S. District Court Judge Vaughn Walker in San Francisco, according to the Electronic Frontier Foundation. Reported in: *American Libraries* online, February 22.

The Supreme Court said March 17 that it would take up the issue of foul language on the airwaves for the first time in thirty years, agreeing to review a ruling that undercut the way regulators define indecency on television.

The high court agreed to hear an appeal by the FCC, which is seeking to reaffirm its authority to declare a single "fleeting" utterance in violation of its indecency rules.

The FCC appealed to the high court in an effort to overturn a June 4 ruling by the U.S. Court of Appeals for the Second Circuit in New York, which found that the agency had failed to justify it standard for "fleeting" indecency.

The case stemmed from an FCC ruling in March of 2006, in which the agency found News Corp's Fox television network violated decency rules when singer Cher blurted "fuck" during the 2002 Billboard Music Awards broadcast and actress Nicole Richie used a variation of that word and "shit" during the 2003 awards. No fines were imposed. But Fox challenged the decision in court, arguing that the government's decency standard was unclear, violated free-speech protections, and that the rulings had contradicted findings in past cases.

The appeals court sided with Fox, saying the FCC had "failed to articulate a reasoned basis" for its "fleeting" indecency standard and expressed skepticism about whether the courts would find it constitutional. It sent the matter back to the agency for further consideration.

The FCC said in its appeal to the high court that the appellate ruling should be reversed as it conflicted with a past Supreme Court ruling and is "inconsistent with settled principles governing judicial review of agency action."

Fox said it was glad the high court had agreed to hear the case "as this will give us an opportunity to demonstrate once again the arbitrary nature of the FCC's decision in this and similar cases. It will also give us the opportunity

to argue that the FCC's expanded enforcement of the indecency law is unconstitutional in today's diverse media marketplace where parents have access to a variety of tools to monitor their children's television viewing," Fox said in a statement.

The decision marked the first time the Supreme Court has taken up the issue of broadcast indecency since its landmark 1978 decision in the case *FCC* v. *Pacifica Foundation*. That case centered on the radio broadcast of a monologue by comedian George Carlin called "Filthy Words." In its ruling, the high court upheld the FCC's authority to sanction indecent material broadcast over the airwaves.

The FCC, under the administration of President George W. Bush, embarked on a crackdown of indecent content on broadcast TV and radio after pop star Janet Jackson briefly exposed her bare breast during the 2004 broadcast of the Super Bowl halftime show.

The Supreme Court is expected to hear arguments in the case and to issue a decision during its upcoming term that begins in October. Reported in: Reuters, March 17.

schools

Lexington, Massachusetts

A federal appeals court on January 31 upheld the dismissal of a lawsuit filed by Lexington parents who objected to same-sex families being discussed in their children's elementary school classrooms.

Tonia and David Parker of Lexington sued school officials in April 2006 after their son brought home a book from kindergarten that depicted a gay family. Joseph and Robin Wirthlin joined the suit after a second-grade teacher read the class a story about two princes falling in love.

In a ruling, the U.S. Court of Appeals for the First Circuit agreed with a judge who ruled in February 2007 that parents' rights to exercise their religious beliefs are not violated when their children are exposed to contrary ideas in school.

"Public schools are not obliged to shield individual students from ideas which potentially are religiously offensive, particularly when the school imposes no requirement that the student agree with or affirm those ideas, or even participate in discussions about them," the court said in its ruling.

Jeffrey Denner, an attorney for the parents, said they were disappointed with the ruling and are considering appealing to the U.S. Supreme Court. "Normally, when kids are taught certain things, they believe it to come from on high," Denner said. "I think this influences the way they think in very, very direct ways and becomes functionally indoctrinating to them." Reported in: *Boston Globe,* January 31.

colleges and universities

Irvine, California

When the U.S. Supreme Court two years ago limited the First Amendment protections available to public employees, faculty groups thought they had dodged a bullet. While the decision didn't go the way professors hoped, it specifically indicated that additional issues might limit its application in cases involving public college professors.

Now, however, a federal court has applied just the principle that faculty groups thought shouldn't be applied in higher education—that bosses can punish employees for speech deemed inappropriate—to a case involving a university. As a result, the American Association of University Professors and the Thomas Jefferson Center for the Protection of Free Expression are asking a federal appeals court to affirm that the Supreme Court decision does not apply to public higher education. The two groups warn that failure to reverse the lower court's decision could make it impossible for professors to freely debate hiring choices or campus policies.

The Supreme Court case that set off this concern had nothing to do with higher education. Rather, in *Garcetti* v. *Ceballos,* the court ruled 5–4 that normal First Amendment protections did not protect Richard Ceballos, a Los Angeles deputy district attorney who was demoted and transferred after criticizing a local sheriff's conduct to his supervisors. In his decision, Justice Anthony M. Kennedy wrote: "We hold that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline."

But Kennedy also included language that lessened the fears of faculty groups, which said such a standard would be inappropriate in public higher education, where shared governance means that professors routinely question the policies of superiors. Kennedy wrote: "There is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this court's customary employee-speech jurisprudence. We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching."

Now, two years later, the AAUP and the Thomas Jefferson Center fear that a federal district court may have missed that section of the decision.

In the current case, Juan Hong, a professor of chemical engineering at the University of California at Irvine, maintains that he was unfairly denied a merit raise because comments he made in faculty meetings offended superiors. Some of those comments concerned personnel decisions. More generally, Hong said that his department was relying too much on part-time instructors to teach

lower-division courses, and that students were entitled to full-time professors.

The district court dismissed the suit, saying that these discussions were part of the "official duties" of professors, and thus, under the *Garcetti* decision, were not entitled to First Amendment protection. The court did not determine whether the lost merit raise was related to the comments, and the faculty groups' brief focuses on the legal principles, not the specific cases.

By ignoring Justice Kennedy's statements about the additional issues for higher education, the brief says, the district court's analysis was "fatally flawed." There are "profound differences," the brief says, between academic and other employment, among them the need for professors to express their honest views on a range of issues—from student grades to course design to academic policy to hiring decisions.

More broadly, the brief argues that courts have traditionally respected academic freedom for good reason. "The speech of university professors merits a special degree of protection not only to facilitate an uninhibited pursuit of truth and advancement of knowledge, but equally to encourage scholars to speak candidly and fearlessly as they convey sometimes unwelcome or unsettling truths to government and citizens," the brief says.

While the brief expresses shock that the *Garcetti* decision would apply in higher education, the dissent in the 2006 ruling suggested just that possibility. Justice David Souter wrote that the majority decision "is spacious enough to include even the teaching of a public university professor, and I have to hope that today's majority does not mean to imperil the First Amendment protection of academic freedom in public colleges and universities, whose teachers necessarily speak and write 'pursuant to official duties.'" Reported in: insidehighered.com, March 24.

Williamsburg, Kentucky

A Kentucky judge has ruled that a $10-million state appropriation provided to a Baptist university to build a pharmacy school is unconstitutional. The appropriation, made in 2006 to the University of the Cumberlands, was challenged in state court after the institution suspended a student who had come out as gay on a social-networking website.

In a summary judgment released March 6, Judge Roger L. Crittenden of the State Circuit Court in Franklin County wrote that the appropriation "is a direct payment to a nonpublic religious school for educational purposes," and therefore not permitted by Kentucky's Constitution.

Judge Crittenden also ruled that the court did not have to make a decision on the issue of whether the university had discriminated against a gay student. He did note, however, that "this is exactly the 'entanglement' between government interests and religious institutions that the Kentucky Constitution prohibits."

The University of the Cumberlands was joined by thirteen Republican state legislators as defendants in the case. James H. Taylor, the university's president, said in a written statement that the university will consider an appeal and evaluate the viability of a new pharmacy program. "Our Board of Trustees will need an opportunity to study this opinion and its consequences for the university," said Taylor. He added, "I have no doubt that the funds appropriated for the pharmacy school would have served the public interest well."

The judge also declared unconstitutional a separate $2-million appropriation allocated to the university in 2006 from coal-severance tax revenue. Those funds were to have financed scholarships for students who would have enrolled in the Baptist institution's new pharmacy program.

The suspension of Jason Johnson, who was told to vacate his dormitory after University of the Cumberlands administrators confronted him with printouts of his MySpace page, occurred just weeks after Kentucky's legislature finalized the spending bill in the spring of 2006 that included the disputed appropriations for the university. Gay-rights groups attacked the appropriations and insisted that public funds should not support a private college that discriminates against gay students. Those groups applauded the ruling.

"The ruling essentially reaffirms that taxpaying Kentuckians are not expected to support private, religious-based institutions that discriminate against gay students," said Christina Gilgor, executive director of the Kentucky Fairness Alliance, which was a plaintiff in the case. The former student, Johnson, did not take part in the lawsuit. Reported in: *Chronicle of Higher Education* online, March 7.

periodicals

Chicago, Illinois; Boston, Massachusetts

Grandiose language appeared in the pages of medical journals in March, as well as in federal court, about a looming threat to peer review. The threat comes in the form of subpoenas from the pharmaceutical giant Pfizer requesting confidential peer reviews and editors' comments about two of Pfizer's arthritis drugs: Celebrex and Bextra. The latter is now off the market, and Pfizer is defending itself in court against plaintiffs who think they were injured as a result of taking one of the drugs.

Should the journals be forced to comply, said Jeffrey M. Drazen, editor in chief of the *New England Journal of Medicine,* in an affidavit, "the entire peer-review process would come to a halt" and the journal would be unable "to serve the millions of health-care professionals and billions of patients on a weekly basis."

In the pages of the *Journal of the American Medical Association,* Catherine D. DeAngelis, the editor in chief, and Joseph P. Thornton, the journal's editorial counsel, asserted that the "sanctity" of peer review "should not be violated."

Pfizer disagreed with vehemence. "The public has no interest," it said in a motion to force the *New England Journal of Medicine* to provide the documents, "in protecting the editorial process of a scientific journal."

The company asked at least six medical journals for documents related to any manuscripts about the two drugs the publications had received, including rejected articles.

The *Archives of Internal Medicine* joined the *New England Journal of Medicine* and *JAMA* in refusing to turn over confidential materials. Three others, *BMJ* (formerly known as the *British Medical Journal*), *Circulation,* and *Stroke,* declined to say how they had responded to the subpoenas.

In March, a federal judge in Chicago sided with *JAMA* and the *Archives,* saying they did not need to turn over their confidential documents. Magistrate Judge Arlander Keys argued that the information contained in the peer reviews, editors' comments, and unpublished manuscripts was "irrelevant" to the case, and that the peer-review process would suffer if the journals complied with the subpoenas.

A separate case regarding the *New England Journal of Medicine* is pending before a federal judge in Boston. A lawyer for the journal said a decision was expected soon. If the journal is forced to turn over its documents, ripples would expand through the world of academic publishing. Reviewers might shy away from new manuscripts, given the possibility that their comments could appear in the open and that they might even be called to the stand to defend or criticize key scientific studies.

Donald Kennedy, who just retired as editor of *Science* and is a former president of Stanford University, said his former journal might even modify its instructions to reviewers to mention that it might not be able to protect them against a subpoena. (Kennedy also filed an affidavit in support of *The New England Journal of Medicine*.)

Even *BMJ,* known for revealing the names and comments of peer reviewers to authors, has documents that would not appear in public unless the journal produced them in response to a subpoena. Although authors see them, nobody else outside the journal does. "There is a lot of resistance even to the kind of open review we offer," said Trish Groves, a deputy editor.

But the ripples might be just that: ripples, not waves, said William G. Childs, an associate professor of law at Western New England College. Childs, who has defended pharmaceutical companies, noted that in a 2001 case, the journal *Occupational and Environmental Medicine* turned over confidential peer-review comments without any noticeable effect on journals' ability to recruit reviewers.

However, editors should also not take much comfort if the judge in Boston agrees with the one in Chicago, Childs said. These rulings are for cases where the materials sought are not directly relevant, since none of the authors are involved in the litigation over the drugs. Still open to question is whether peer reviews of studies more pertinent to some other case will remain closeted if they are demanded in court. Reported in: *Chronicle of Higher Education* online, March 28.

video games

Minneapolis, Minnesota

Minnesota may not enforce a law restricting the sale or rental of "adults only" or "mature" video games to minors, according to an opinion issued March 17 by the U.S. Court of Appeals for the Eighth Circuit. A three-judge panel said the court previously had held that violent video games are protected free speech under the First Amendment of the Constitution. For that reason, the law can only be upheld if it is proven "necessary to serve a compelling state interest and . . . is narrowly tailored to achieve that end," the panel ruled.

The Entertainment Software and Entertainment Merchants associations sued Minnesota in federal court in 2006 seeking to prevent enforcement of the law and have it declared unconstitutional. The state introduced evidence attempting to show a causal connection between media violence and aggressive behavior in some children. But Chief U.S. District Judge James Rosenbaum ruled in July 2006 that violent video games were protected speech, even for children. He found the state failed to prove its claim that playing violent video games caused lasting harm to the psychological well-being of minors.

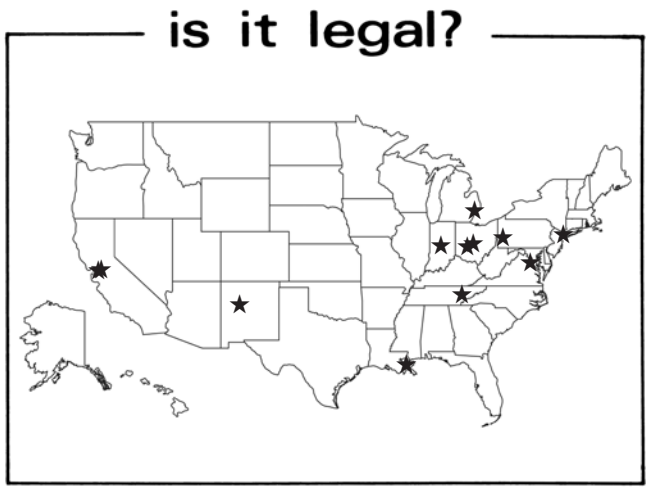
Rosenbaum also faulted the state for failing to address other forms of violence in the media. And he held that the state's dependence on a voluntary rating board to determine which games should be restricted was unconstitutional because it did not permit immediate judicial supervision of the ratings.

Rosenbaum said a requirement that stores post notices about the law was a "state-compelled false statement that unconstitutionally required the expression of an unenforceable law."

Judge Roger L. Wollman of Sioux Falls, South Dakota, wrote the opinion for the appeals court, which included Judges Lavenski R. Smith of Little Rock, Arkansas, and Duane Benton of Kansas City, Missouri. While the judges upheld Rosenbaum's ruling that violent games are entitled to First Amendment protections, they did so reluctantly. Wollman wrote that "whatever our intuitive (dare we say commonsense) feelings regarding the effect that extreme violence portrayed in the above-described video games may well have upon the psychological well-being of minors," precedent requires incontrovertible proof of a causal relationship between exposure to the games and some psychological harm.

The state failed to meet that burden, Wollman wrote.

(continued on page 127)



libraries

Lindsay, California

Brenda Biesterfeld has become the talk of Lindsay. People are saying she deserves a pat on the back, maybe an award, for telling police that a man was viewing child pornography in the city's library. Which is why residents were shocked when she got a pink slip from her job as a Tulare County librarian.

"They blew it," said Lindsay resident Anthony Richey, a frequent patron of the Tulare County Library in Lindsay and a friend of Biesterfeld. "When they fired her it was all over the place, and everybody's upset about it."

Biesterfeld, 46, was pretty upset herself. On March 6—just about a week before her six-month probationary period was to end—she got a letter notifying her she was being fired. "I just feel I was trying to protect my children, and the children, you know, the children all over," she said. "It's really sad," she added. "If that's the county's policy, I will never let my children go into a public library again."

Neither library nor county officials would discuss the circumstances of the firing or the reasons behind it. But county librarian Brian Lewis said there were sound business reasons and that he ran them by county human-resources officials before firing her.

Biesterfeld, however, said she has no doubt that losing her job stemmed from her decision to call police about a man she saw viewing images of naked boys on one of the library's public computers February 28. The boys appeared to be about 9 to 13 years old, she said.

The man was identified by Lindsay police as Donny Lynn Chrisler, 39. Biesterfeld said she stood behind him for ten to twenty seconds and clearly saw thumbnail photos of blonde boys in various poses.

Lewis said all librarians are trained on what to do if they encounter people viewing pornography on public computers. Biesterfeld, however, said she was told only to keep an eye on a man who had been caught in the past viewing adult pornography on a library computer. "That was it," she said. "But this is child pornography, and I felt as soon as a child was involved, he broke the law."

So she called her supervisor, Judi Hill, the library services specialist, whose office is in Visalia. "I told her I was shocked because I have boys that age, and he might as well have had my youngest one up on that screen," Biesterfeld said. "I told her I was sick to my stomach and angry."

She said Hill told her to hand the man a note telling him to stop immediately and that he would be banned from the library if he did it again. The man was deaf, Biesterfeld said. Biesterfeld said she also was directed to note the matter on the man's library record.

"And after I do that, Judi, then I need to contact the police, right?" Biesterfeld said she asked. The answer was no. Biesterfeld said she asked again to make sure she had heard correctly. Again she was told no. "Believe it or not," Biesterfeld quoted Hill as saying, "this is more common than you think."

Biesterfeld said she did as she was told. But after going home and talking to her family and Richey, she decided to report the matter to police. When she did, Lindsay police asked Biesterfeld to contact them the next time Chrisler came to the library. He did so on March 4. "They caught him red-handed [viewing pornography]," Biesterfeld said.

Public computers at Tulare County libraries have software to filter out adult or pornographic Web sites. But Lindsay police captain Rich Wilkinson said Chrisler brought up images attached to an e-mail, bypassing the filters. Police later searched Chrisler's Lindsay home, where they reported finding more images of child pornography. They arrested him on suspicion of possessing child pornography and participating in the production or presentation of obscene matter in public places.

The latter count refers to a statute in California's penal code making it illegal to show pornography or other offensive material in view of the general public, Wilkinson said. In this case, the computer was near the library's circulation desk, where anyone could have walked by and viewed the images, Biesterfeld said. Police also confiscated the computer as evidence.

Biesterfeld hadn't told her supervisors that she called the police or that she was assisting them. Police said they might keep the confiscated computer for more than a year,

and Biesterfeld said she was worried about telling her supervisor. Ultimately, she did tell Hill.

"She kind of threatened me," Biesterfeld said. "She said I worked for the county, and when the county tells you to do something, you do what the county tells you. She said I had no loyalty to the county."

"I told her I was a mother and a citizen also, and not just a county employee," she said.

The March 6 letter from Lewis said the county's probationary employees can be terminated at any time if they don't perform at a level "necessary for fully satisfactory performance in the employee's position." However, Lindsay City Councilwoman Suzi Picaso said that six weeks before Biesterfeld's firing, an assistant of Lewis told her Biesterfeld was doing a great job.

"I just feel that that was handled very unprofessionally and that the procedures they have in place [regarding the reporting of crimes] is very wrong, extremely wrong," Picaso said.

"I think it's rotten she lost her job, no doubt," Lindsay Mayor Ed Murray said. "What company has a policy that says don't report this crime, we'll handle it tomorrow, and if [the offender] comes back again, we'll take his library card away?"

Lewis said that if librarians see patrons downloading pornography, they should call a supervisor. That person can help determine whether the images are pornographic or whether they might have been called up accidentally.

Lewis said that in this case, Hill was told the man already had left and that she couldn't go see what was happening for herself. Biesterfeld, however, said she made it clear the man was still there viewing child pornography. Reported in: *Tulare Advance-Register,* March 14.

Washington, D.C.

The independent Section 108 Study Group, which was set up in 2005 by the Library of Congress to reexamine the exceptions that apply to libraries found under Section 108 of the U.S. Copyright Act, issued its final report March 31 with recommendations on how the law could be adapted to the digital environment. The report will serve as the basis upon which legislation may be drafted and recommended to Congress.

The group focused on the limited exceptions that allow libraries and archives to make preservation or replacement copies of copyrighted works in their collections. Among the recommended changes:

- Include museums as well as libraries and archives.
- Strengthen eligibility requirements to apply only to institutions "possessing a public service mission, employing a trained library or archives staff, providing professional services normally associated with libraries and archives, and possessing a collection comprising lawfully acquired and/or licensed materials."
- Permit qualified libraries to make a preservation copy of an at-risk published work prior to damage or loss, but strictly limit access to such a copy.
- Allow libraries to capture publicly available websites and other online content as long as the content is labeled as "an archived copy for use only for private study, scholarship, and research" with the date of capture.
- Authorize libraries to outsource allowable copying or preservation activities to outside contractors.
- Amend the television news exception to permit archive streaming but not downloading.
- Clarify that libraries are not liable for unsupervised use of personal scanners or cameras by patrons.

The Section 108 Study Group was cochaired by Laura N. Gasaway, associate dean for academic affairs at the University of North Carolina School of Law, and Richard S. Rudick, former senior vice president and general counsel of John Wiley and Sons. The Library of Congress acted as a facilitator for the study group but had no influence over its conclusions.

The report was delivered to Librarian of Congress James H. Billington and Register of Copyrights Marybeth Peters. Reported in: *American Libraries* online, April 4.

Royal Oak, Michigan

In February Royal Oak library officials started requiring adults who want to use a computer longer than fifteen minutes to get a library card or permanent visitor's pass; now they will look into Internet filters to block pornographic websites.

The first change in practice, which went into effect February 18, means library patrons have to give their name and address to use the sixteen computers in the adult lab to do anything more than a quick check of their e-mail. There won't be anonymous people staring at screens for one or more hours, according to Library Board President David Palmer.

"There is now a trail and we hear there has been a great cooling effect from the staff," Palmer told the City Commission.

However, elected officials want more. The commission unanimously took action March 3 asking the library board to revisit its policy of only installing Internet filters on youth computers and consider expanding it to the adult lab.

The issue arose after a Royal Oak man was arrested at the library February 5 for looking at what authorities say was child pornography on a public computer.

"I find it hard to believe that with public money in a public building we're giving someone the opportunity to engage in that activity," said City Commissioner Terry Drinkwine, who made the motion.

Palmer said all library trustees share the commission's

concerns but they haven't gone so far as to install more filters because they don't want to impede adult access to legitimate websites. "I've been in contact with libraries with filters and they block job search sites and things like Craig's list," Palmer said. Also, filters don't stop some savvy computer users from getting to pornographic images. "If we thought these filters would block out all porn they would be out there in a heart beat," Palmer told the commission.

Even so, elected officials said they want more information about what technology works best. "I realize we'll never stop it," City Commissioner Carlo Ginotti. "Maybe that's half the joy—to do it in public. But if we can minimize it we ought to try. There's got to be a way to do it. Royal Oak doesn't have to reinvent the wheel."

City Commissioner Chuck Semchena agreed. "At least we'd put an obstacle between the material and criminal," he said. Reported in: *Royal Oak Daily Tribune,* March 4.

Albuquerque, New Mexico

Albuquerque Mayor Martin Chavez is firing another shot in his war with sex offenders. This time he's banning them from city libraries in an effort to keep predators from an easy access to the Internet.

Until March 3, the Internet was available to anybody in the city with a library card. But the new ban applies to sex offenders registered with the city, state, and national registries. Under the executive order, librarians will do the policing by cross checking library cards with sex offender registries. They will then pass the information on to police who can take action with any one of three levels of enforcement.

For some sex offenders, visiting a library is a violation of their probation and they will be arrested immediately. Others will first be given a criminal trespass notice, then arrested if they return to a library.

However, the ACLU's Whitney Potter says it is a knee-jerk reaction rather than a legitimate strategy for solving the problem. Reported in: koat.com, March 4.

Columbus, Ohio

A meeting titled "Politics and the Pulpit" has spurred a federal lawsuit about freedom of speech and religion filed against the Upper Arlington Public Library.

Citizens for Community Values, a Cincinnati-based social-conservative group, claimed in a suit filed March 7 in U.S. District Court in Columbus that the library violated the group's constitutional rights by first approving and then canceling a meeting February 27 at the library.

Library officials counter that the group was not barred from using the library meeting space to discuss religion or any other topic. But library policy prohibits prayer and singing as "inherent elements of religious service."

"The library does not refuse the use of meeting rooms for discussions," said Ruth McNeil, library community-relations manager. "You can discuss faith, family values or war. This is a place for public discussion. The opportunity to meet here was and still is open to them."

Citizens for Community Values led the successful charge for a statewide ban on same-sex marriage in 2004 and restrictions on strip clubs and other adult businesses that took effect last fall.

The Cincinnati group was joined in the lawsuit by the Alliance Defense Fund, a national organization that has been involved in more than two dozen legal fights about abortion, homosexuality, and religious freedom that eventually were decided by the U.S. Supreme Court. The alliance was on the winning side of lawsuits concerning public displays of the Ten Commandments, so-called partial-birth abortion and adult-oriented materials, and a 2002 decision upholding Ohio's school-voucher program.

"Christian groups shouldn't be discriminated against for their beliefs," attorney Tim Chandler said in an Alliance news release. "The government cannot treat people with nonreligious viewpoints more favorably than people with religious viewpoints. Christians have the same First Amendment rights as anyone else in America."

The lawsuit charges that the First Amendment right to freedom of religion and speech and the Fourteenth Amendment right to due process were violated when library Director Ann R. Moore said the group could not hold its meeting at the library if it included religious elements. The group said the meeting would include a discussion of the intersection of politics and religion, as well as a "prayer petitioning God for guidance in the church's proper role in the political process" and "singing praise and giving thanks to God."

The suit also contends the library's cancellation of the meeting violated the Ohio Constitution because it was discrimination based on religion by a government entity. Reported in: *Columbus Dispatch,* March 8.

schools

Knoxville, Tennessee

An essay on little Johnny's two mommies could be tossed in the bin before it ever gets the chance to bask in hallway display prominence. Newly proposed state legislation would ban anything that exposes students in pre-kindergarten through eighth grade to homosexuality.

"Homosexuality, bisexuality, that's something that should be left to be taught at home and not at our schools," said Rep. Stacey Campfield (R-Knoxville) author of the legislation.

The bill, however, would allow for the teaching of heterosexuality. "Without heterosexuality you wouldn't be able to teach biology," Campfield explained. He also added

keeping heterosexuality on the books would protect schools from litigation.

The initiator behind a slew of unsuccessful yet headline-capturing bills, Campfield also has proposed replacing the state tax on food by taxing pornography and requiring death certificates for aborted fetuses. Campfield's latest bill was sparked by the National Education Association's annual meeting, where there was a call for support of understanding diversity in sexual orientation.

"I don't think our schools have reading, writing and arithmetic down enough to start teaching about transgenderism," Campfield said.

According to the president of the Tennessee Education Association, Earl Wiman, that's far from the case. "We're certainly not teaching children to be homosexuals." Currently, individual school systems across the state set their own rules for such topics through the family life curriculum. "Local school systems should be able to decide what they're doing in their own schools," he said.

In Shelby County Schools, sexual orientation is not discussed or addressed in the curriculum, according to science curriculum specialist Thomasena Stuckett. Memphis City Schools would not speak on the subject but released an authorized statement: "This program of study is not included in Memphis City Schools' current or upcoming revisions to the family life curriculum."

Neither district would deny or confirm that its library books were free of homosexual material.

In Knox County, system spokesman Russ Oaks said, "What we do is teach the state curriculum for health and family life, and there's not a reference to (homosexuality) in that curriculum."

The legislation states: "No public elementary or middle school shall permit any instruction or materials discussing sexual orientation other than heterosexuality."

"The proposal clearly violates free speech," according to Hedy Weinberg, director of ACLU of Tennessee. The legislation could block eighth-grade civics teachers from discussing issues facing presidential candidates, such as civil unions, she said. "The legislature should not be in the business of interfering with local educators to responsibly teach about diversity and other current events affecting kids today," she said. Reported in: *Memphis Commercial-Appeal,* February 13.

colleges and universities

Cedarville, Ohio

The termination of two tenured Bible professors last summer at Cedarville University has plunged the Baptist institution in Ohio into months of turmoil and intrigue. It also has prompted the American Association of University Professors to open an investigation.

The imbroglio occurred against the backdrop of a deeper theological debate within the university over degrees of certainty about the truth of the Bible. But the divide is not merely over doctrine. In early March, a grievance panel at the institution reached a split decision in favor of one of the fired professors, citing administrative missteps as part of its rationale.

The climate at Cedarville was decried openly in a letter written by prominent past and current faculty members and published in January. The letter, which was circulated to the university's professors, administrators, and trustees, described what it characterized as a climate of fear at Cedarville, where many faculty members worry that tenure means little. "There is a general reluctance on the part of faculty to disagree" with the administration "for fear of retribution," the letter said.

Early last July, Cedarville notified David Hoffeditz and David Mappes, both tenured professors in the university's biblical-studies department, that their contracts at the university were being terminated. That notice came just a few months after the university had issued the two professors employment contracts for the 2007–08 academic year.

Shortly thereafter, the university posted a statement on its website saying that "for some time now, certain issues in the department of biblical education have distracted the attention and energies of the university from its critical purpose." In an effort to "restore a healthy team spirit within the department," the statement said, the university had taken "personnel actions resulting in the departure of two faculty members."

The statement then said that the university's "commitments to the inerrancy of Scripture, to its historic doctrinal position, and to its conservative theological heritage have not changed."

That abrupt transition from "team spirit" to "the inerrancy of Scripture" hints at the deeper theological backdrop of the controversy at Cedarville—a battle between modernity and postmodernity that has become both political and personal, according to many observers. Hoffeditz and Mappes see themselves as sitting squarely on the modern, more conservative side of that conflict.

The university has declined to outline its reasons for terminating Hoffeditz and Mappes in any greater detail, citing confidentiality requirements. Cedarville administrators and a lawyer for the university also declined repeated requests for comment except to say that the university "intends to follow its grievance process."

One stage of that process came to a conclusion when a faculty panel investigating the termination of Hoffeditz released a report. In a split decision, the panel found in favor of the professor. The panel stated that the university's dispute with Hoffeditz is just one aspect of a "unique period of turbulence" at the university, one "given root by a Bible department unable to resolve its long-standing interpersonal and philosophical differences, essentially forcing a young administration to commandeer a thorny, multidimensional

problem in order to solve it."

"In this particular case," the panel concluded, "a Christ-centered community we are not."

Mappes and Hoffeditz both filed grievances with the university after receiving their notices of termination. Mappes said he later suspended his grievance "in hopes of having an amicable parting of ways." Hoffeditz, however, pursued his complaint. And the five-member faculty Grievance Investigation Panel found in his favor.

The panel wrote that Hoffeditz "overstated his case in some instances and could have been more forthright in his position." The panel also accused both professor and university of acting "uncharitably and unprofessionally." But the panel's report reserved the bulk of its criticism for the administration. The grievance panel found that Hoffeditz did not receive any "written reprimands, warnings, or plans of correction" from the administration before he was handed his notice of termination, despite the university's assertion last summer that "every other option" short of termination had been "exhausted."

The panel also said that it "understands the university position to be that Dr. Hoffeditz insisted that his colleagues adhere to doctrinal positions that are not in the [university's] doctrinal statement." But the grievance panel found that Hoffeditz did not breach the doctrinal statement.

In scrutinizing the university's handling of Hoffeditz, the grievance panel even turned its investigation in on itself. "The university attorney has had significant influence on the process," the panel wrote. "The dual role of the university attorney, serving as counsel to both the university and the GIP, gives rise to conflict of interest concerns."

That particular finding, along with several other aspects of Hoffeditz's case, caught the eye of the American Association of University Professors, which has opened an investigation of the turmoil at Cedarville. "What complicates this case is that we are dealing with a church-related institution which makes quite explicit limitations on academic freedom," said B. Robert Kreiser, an associate secretary of the AAUP's department of academic freedom, tenure, and governance. "The question here is whether the institution acted within those stated limitations."

An additional complication is that the university has commanded the panel to deliver all records of its hearings to the office of the president. According to recent e-mail correspondence from the grievance committee chairman, that order came despite rules governing the grievance process that say that no one outside the panel should have access to the tapes and transcripts of the panel's meetings.

"The only copy of everything is now in the hands of the administration," said Kreiser. "That's very disturbing."

But much of Kreiser's concern is more basic. "Under the principles of tenure, a faculty member cannot be dismissed without the administration demonstrating adequate cause," he said. "Customarily, the burden is on the administration." But by all indications of the way the process was set up, Kreiser said, "the burden was on Professor Hoffeditz to show why he shouldn't have been dismissed."

A theological impasse dividing Cedarville's campus has also played a role in the controversy. Known as the "truth and certainty debate," the dispute involves a somewhat rarefied but hotly contested question of faith: can Christians enjoy certainty of Biblical truth, or do they merely have the assurance of their faith that the Bible is factual? It is a question that folds into a still larger debate over how much Christianity should reconcile with the intellectual context of postmodernity. Those who hold to a belief in certainty, Hoffeditz and Mappes among them, tend to consider themselves more theologically conservative.

Those theological themes figured prominently in the open letter written this January to the faculty, administration, and trustees of Cedarville by a group of fourteen current and emeritus Cedarville faculty members—a group calling itself the "Coalition of the Concerned." That letter referred to Mappes and Hoffeditz and also to three other professors who either resigned or were denied tenure in the 2006–07 academic year as "theologically conservative" members of the Bible department. "There is fear that other theologically conservative members within the department and the general faculty may be terminated," the letter said. Reported in: *Chronicle of Higher Education* online, March 7.

government surveillance

San Francisco, California

Nabila Mango, a therapist and a U.S. citizen who has lived in the country since 1965, had just flown in from Jordan last December when, she said, she was detained at customs and her cell phone was taken from her purse. Her daughter, waiting outside San Francisco International Airport, tried repeatedly to call her during the hour and a half she was questioned. But after her phone was returned, Mango saw that records of her daughter's calls had been erased.

A few months earlier in the same airport, a tech engineer returning from a business trip to London objected when a federal agent asked him to type his password into his laptop computer. "This laptop doesn't belong to me," he remembers protesting, "it belongs to my company." Eventually, he agreed to log on and stood by as the officer copied the websites he had visited, said the engineer, a U.S. citizen who spoke on the condition of anonymity for fear of calling attention to himself.

Maria Udy, a marketing executive with a global travel management firm in Bethesda, Maryland, said her company laptop was seized by a federal agent as she was flying from Dulles International Airport to London in December 2006. Udy, a British citizen, said the agent told her he had "a security concern" with her. "I was basically given the option of handing over my laptop or not getting on that flight," she said.

The seizure of electronics at U.S. borders has prompted protests from travelers who say they now weigh the risk of traveling with sensitive or personal information on their laptops, cameras, or cellphones. In some cases, companies have altered their policies to require employees to safeguard corporate secrets by clearing laptop hard drives before international travel.

On February 7, the Electronic Frontier Foundation and Asian Law Caucus, two civil liberties groups in San Francisco, filed a lawsuit to force the government to disclose its policies on border searches, including which rules govern the seizing and copying of the contents of electronic devices. They also want to know the boundaries for asking travelers about their political views, religious practices and other activities potentially protected by the First Amendment. The question of whether border agents have a right to search electronic devices at all without suspicion of a crime is already under review in the federal courts.

The lawsuit was inspired by two dozen cases, fifteen of which involved searches of cell phones, laptops, MP3 players and other electronics. Almost all involved travelers of Muslim, Middle Eastern, or South Asian background, many of whom, including Mango and the tech engineer, said they are concerned they were singled out because of racial or religious profiling.

A U.S. Customs and Border Protection spokeswoman, Lynn Hollinger, said officers do not engage in racial profiling "in any way, shape or form." She said that "it is not CBP's intent to subject travelers to unwarranted scrutiny" and that a laptop may be seized if it contains information possibly tied to terrorism, narcotics smuggling, child pornography, or other criminal activity.

The reason for a search is not always made clear. The Association of Corporate Travel Executives, which represents 2,500 business executives in the United States and abroad, said it has tracked complaints from several members, including Udy, whose laptops have been seized and their contents copied before usually being returned days later, said Susan Gurley, executive director of ACTE. Gurley said none of the travelers who have complained to the ACTE raised concerns about racial or ethnic profiling. Gurley said none of the travelers were charged with a crime.

"I was assured that my laptop would be given back to me in ten or fifteen days," said Udy, who continues to fly into and out of the United States. She said the federal agent copied her log-on and password, and asked her to show him a recent document and how she gains access to Microsoft Word. She was asked to pull up her e-mail but could not because of lack of Internet access. With ACTE's help, she pressed for relief. More than a year later, Udy has received neither her laptop nor an explanation.

ACTE last year filed a Freedom of Information Act request to press the government for information on what happens to data seized from laptops and other electronic devices. "Is it destroyed right then and there if the person is in fact just a regular business traveler?" Gurley asked. "People are quite concerned. They don't want proprietary business information floating, not knowing where it has landed or where it is going. It increases the anxiety level."

Udy has changed all her work passwords and no longer banks online. Her company, Radius, has tightened its data policies so that traveling employees must access company information remotely via an encrypted channel, and their laptops must contain no company information.

At least two major global corporations, one American and one Dutch, have told their executives not to carry confidential business material on laptops on overseas trips, Gurley said. In Canada, one law firm has instructed its lawyers to travel to the United States with "blank laptops" whose hard drives contain no data. "We just access our information through the Internet," said Lou Brzezinski, a partner at Blaney McMurtry, a major Toronto law firm. That approach also holds risks, but "those are hacking risks as opposed to search risks," he said.

The U.S. government has argued in a pending court case that its authority to protect the country's border extends to looking at information stored in electronic devices such as laptops without any suspicion of a crime. In border searches, it regards a laptop the same as a suitcase.

"It should not matter . . . whether documents and pictures are kept in 'hard copy' form in an executive's briefcase or stored digitally in a computer. The authority of customs officials to search the former should extend equally to searches of the latter," the government argued in the child pornography case being heard by a three-judge panel of the Court of Appeals for the Ninth Circuit in San Francisco.

As more and more people travel with laptops, PDAs, and cell phones, the government's laptop-equals-suitcase position is raising red flags.

"It's one thing to say it's reasonable for government agents to open your luggage," said David D. Cole, a law professor at Georgetown University. "It's another thing to say it's reasonable for them to read your mind and everything you have thought over the last year. What a laptop records is as personal as a diary but much more extensive. It records every website you have searched. Every e-mail you have sent. It's as if you're crossing the border with your home in your suitcase."

If the government's position on searches of electronic files is upheld, new risks will confront anyone who crosses the border with a laptop or other device, said Mark Rasch, a technology security expert with FTI Consulting and a former federal prosecutor. "Your kid can be arrested because they can't prove the songs they downloaded to their iPod were legally downloaded," he said. "Lawyers run the risk of exposing sensitive information about their client. Trade secrets can be exposed to customs agents with no limit on what they can do with it. Journalists can

expose sources, all because they have the audacity to cross an invisible line."

Hollinger said customs officers "are trained to protect confidential information."

Shirin Sinnar, a staff attorney with the Asian Law Caucus, said that by scrutinizing the websites people search and the phone numbers they've stored on their cell phones, "the government is going well beyond its traditional role of looking for contraband and really is looking into the content of people's thoughts and ideas and their lawful political activities."

If conducted inside the country, such searches would require a warrant and probable cause, legal experts said. Customs sometimes singles out passengers for extensive questioning and searches on the basis of "information from various systems and specific techniques for selecting passengers," including the Interagency Border Inspection System, according to a statement on the CBP Web site. "CBP officers may, unfortunately, inconvenience law-abiding citizens in order to detect those involved in illicit activities," the statement said. But the factors agents use to single out passengers are not transparent, and travelers generally have little access to the data to see whether there are errors.

Although Customs said it does not profile by race or ethnicity, an officers' training guide states that "it is permissible and indeed advisable to consider an individual's connections to countries that are associated with significant terrorist activity."

"What's the difference between that and targeting people because they are Arab or Muslim?" Cole said, noting that the countries the government focuses on are generally predominantly Arab or Muslim.

It is the lack of clarity about the rules that has confounded travelers and raised concerns from groups such as the Asian Law Caucus, which said that as a result, their lawyers cannot fully advise people how they may exercise their rights during a border search. The lawsuit says a Freedom of Information Act request was filed with Customs last fall but that no information has been received.

Kamran Habib, a software engineer with Cisco Systems, has had his laptop and cell phone searched three times in the past year. Once, in San Francisco, an officer "went through every number and text message on my cell phone and took out my SIM card in the back," said Habib, a permanent U.S. resident. "So now, every time I travel, I basically clean out my phone. It's better for me to keep my colleagues and friends safe than to get them on the list as well."

Udy's company, Radius, organizes business trips for 100,000 travelers a day, from companies around the world. She says her firm supports strong security measures. "Where we get angry is when we don't know what they're for." Reported in: *Washington Post,* February 7.

Washington, D.C.

Senior officials of the Federal Bureau of Investigation repeatedly approved the use of "blanket" records demands to justify the improper collection of thousands of phone records, according to officials briefed on the practice. The bureau appears to have used the blanket records demands at least eleven times in 2006 alone as a quick way to clean up mistakes made over several years after the September 11 attacks, according to a letter provided to Congress by a lawyer for an FBI agent who witnessed the missteps.

The FBI has come under fire for its use of national security letters to inappropriately gather records on Americans in terrorism investigations, but details have not previously been disclosed about its use of "blanket" warrants, a one-step operation used to justify the collection of hundreds of phone and e-mail records at a time.

Under the USA PATRIOT Act, the FBI received broadened authority to issue the national security letters on its own authority—without the approval of a judge—to gather records like phone bills or e-mail transactions that might be considered relevant to a particular terrorism investigation. The Justice Department inspector general found in March 2007 that the FBI had routinely violated the standards for using the letters and that officials often cited "exigent" or emergency situations that did not really exist in issuing them to phone providers and other private companies.

In an updated report released on March 13, the inspector general reported that the violations continued through 2006, when the FBI instituted new internal procedures.

The inspector general's ongoing investigation is also said to be focusing on the FBI's use of the blanket letters as a way of justifying the collection of large amounts of records at one time. FBI officials acknowledged the problem, calling it inadvertent, and said officials had been instructed that they could no longer issue blanket orders. Instead, officials have to determine why particular records are considered relevant.

A letter sent to Senator Charles E. Grassley, Republican of Iowa, provides new details on the FBI's use of the national security letters, including the practice of issuing the blanket demands. The letter was written by Stephen M. Kohn, a Washington lawyer representing Bassem Youssef, an FBI agent who reported what he thought were abuses in the use of national security letters and was interviewed for three days by the inspector general. In a separate matter, Youssef is suing the FBI in a discrimination claim.

Sen. Grassley said that he was concerned by the issues raised in Kohn's letter. "In the past, the FBI has shown a propensity to act as if it were above the law," he said. "That attitude clearly needs to stop. Part of the way we can help the FBI clean up its act is to pay close attention to information from whistle-blowers like Bassem Youssef. We need aggressive follow-up from the inspector general to ensure accountability and reform."

By 2006, FBI officials began learning that the bureau

had issued thousands of "exigent" or emergency records demands to phone providers in situations where no life-threatening emergency existed, according to the account of Youssef, who worked with the phone companies in collecting records in terrorism investigations. In these situations, the FBI had promised the private companies that the emergency records demands would be followed up with formal subpoenas or properly processed letters, but, often, the follow-up material never came.

This created a backlog of records that the FBI had obtained without going through proper procedures. In response, the letter said, the FBI devised a plan: rather than issuing national security letters retroactively for each individual investigation, it would issue the blanket letters to cover all the records obtained from a particular phone company.

"When Mr. Youssef was first informed of this concept, he was very uncomfortable with it," his lawyer said in his letter to Senator Grassley. But the plan was ultimately approved in 2006 by three senior officials at highest levels of the FBI, and in the process, Kohn maintains, the solution may have worsened the problem. "They made a mistake in cleaning up a mistake," Kohn said, "because they didn't know the law."

An FBI official who asked for anonymity because the inspector general is still examining the blanket warrant issue said the practice was "an attempt to fix a problem. This was ham-handed but pure of heart," the official said. "This was nothing evil, but it was not the right way to do it." Reported in: *New York Times,* March 13.

Washington, D.C.

A technical glitch gave the FBI access to the e-mail messages from an entire computer network—perhaps hundreds of accounts or more—instead of simply the lone e-mail address that was approved by a secret intelligence court as part of a national security investigation, according to an internal report of the 2006 episode.

FBI officials blamed an "apparent miscommunication" with the unnamed Internet provider, which mistakenly turned over all the e-mail from a small e-mail domain for which it served as host. The records were ultimately destroyed, officials said.

Bureau officials noticed a "surge" in the e-mail activity they were monitoring and realized that the provider had mistakenly set its filtering equipment to trap far more data than a judge had actually authorized. The episode is an unusual example of what has become a regular if little-noticed occurrence, as American officials have expanded their technological tools: government officials, or the private companies they rely on for surveillance operations, sometimes foul up their instructions about what they can and cannot collect.

The problem has received no discussion as part of the fierce debate in Congress about whether to expand the government's wiretapping authorities and give legal immunity to private telecommunications companies that have helped in those operations.

But an intelligence official, who spoke on condition of anonymity because surveillance operations are classified, said, "It's inevitable that these things will happen. It's not weekly, but it's common."

A report in 2006 by the Justice Department inspector general found more than one hundred violations of federal wiretap law in the two prior years by the FBI, many of them considered technical and inadvertent. Bureau officials said they did not have updated public figures but were preparing them as part of a wider-ranging review by the inspector general into misuses of the bureau's authority to use national security letters in gathering phone records and financial documents in intelligence investigations.

In the warrantless wiretapping program approved by President Bush after the September 11 terrorist attacks, technical errors led officials at the National Security Agency on some occasions to monitor communications entirely within the United States—in apparent violation of the program's protocols—because communications problems made it difficult to tell initially whether the targets were in the country or not.

Past violations by the government have also included continuing a wiretap for days or weeks beyond what was authorized by a court, or seeking records beyond what were authorized. The 2006 case appears to be a particularly egregious example of what intelligence officials refer to as "overproduction"—in which a telecommunications provider gives the government more data than it was ordered to provide.

The problem of overproduction is particularly common, FBI officials said. In testimony before Congress in March 2007 regarding abuses of national security letters, Valerie E. Caproni, the bureau's general counsel, said that in one small sample, ten out of twenty violations were a result of "third-party error," in which a private company "provided the FBI information we did not seek."

The 2006 episode was disclosed as part of a new batch of internal documents that the FBI turned over to the Electronic Frontier Foundation, a nonprofit group in San Francisco that advocates for greater digital privacy protections, as part of a Freedom of Information Act lawsuit the group has brought.

Marcia Hofmann, a lawyer for the privacy foundation, said the episode raised troubling questions about the technical and policy controls the FBI had in place to guard against civil liberties abuses. "How do we know what the FBI does with all these documents when a problem like this comes up?" Hofmann asked.

In the cyber era, the incident is the equivalent of law enforcement officials getting a subpoena to search a single

(continued on page 127)

libraries

Greenwich, Connecticut

Greenwich Library officials decided February 14 to allow a speaker to proceed with two scheduled lectures on Israeli-Palestinian relations at the library's Cole Auditorium. The permission was a reversal of a previous action to cancel the lectures after the library received a number of complaints from community members.

The speaker, Alison Weir, is the founder of If Americans Knew, an organization critical of U.S. news coverage of the Middle East. After privately placed advertisements for Weir's speech "Israel-Palestine: Beyond the Headlines" ran in local papers February 8, the library began receiving negative feedback. One of the issues, Executive Director Mario González said, was that some community members believed that the library itself booked the program. Library officials then opted to cancel the talks because they were "offensive to public sensitivity," as outlined in the library's meeting-room policy.

"The library does not normally receive complaints on programs that have been held on its grounds, so when numerous complaints came in on this particular program, the library needed to do due diligence and determine what was in the best interest of the public," González said. The library typically holds around 1,100 programs every year and none have ever before been challenged, González said.

However, following the initial cancellation, Weir insisted that it was her constitutional right to deliver her program. After fielding complaints from supporters of Weir's assertion, most of them from out-of-state, library trustees sought legal counsel and affirmed that, although the library is a private nonprofit organization, because the town of Greenwich supplies some of the operating budget, the facility is technically a public institution that cannot discriminate over which groups can hold events there.

"We hope that the community understands that this was a legal decision based on advice from legal counsel," González said. "The community overall has been very supportive of our decision and understands the legality of the issue."

"The only thing that concerns me now is that the library management basically already said that my program violated public sensitivities," Weir said. Weir's first program, held the evening of February 14 and attended by people on both sides of the issue, went off without incident, though the library did bolster the amount of security guards and added a police presence, González said.

A similar controversy was brewing at the Vancouver (British Columbia) Public Library, where Greg Felton, author of *The Host and the Parasite: How Israel's Fifth Column Consumed America,* was scheduled to present a book discussion February 25 during Canada's Freedom to Read Week. After an opinion piece by Terry Glavin ran in the February 12 *Vancouver Sun*_criticizing the library for giving a platform to an accused anti-Semite, City Librarian Paul Whitney wrote a February 13 rebuttal, stating that the public library's role "is to provide a forum for an open and public exchange of contradictory views and to make materials available that represent a wide range of views, including those that may be considered unconventional, unpopular, or unacceptable." Reported in: *American Libraries* online, February 15.

Lackawanna, New York

The Lackawanna School Board voted 5–2 March 12 to restore six book titles to a list of 280 books recommended by its middle school library committee following accusations of censorship by some parents and teachers.

Board Member Sandra Seitz requested at the board's January 14 work session that the books be pulled from the list pending further review by the middle school library committee. Seitz expressed concerns that the books dealt with the occult which, she said, made them inappropriate for middle school-age pupils. At a subsequent meeting, the School Board agreed and voted 4–3 to temporarily pull them.

That didn't sit well with some parents, like Lisa Lofredo. "Seems to me that categorizing the list of books we're dealing with as the occult, you're also including many classics, such as *The Hobbit, Lord of the Rings* [and] *The Chronicles of Narnia,*" she told the board.

In addition to objecting to the board isolating the six

titles from the library board's recommended list, Lofredo took exception to Seitz's concerns that the books could negatively influence young readers. "Do you honestly believe that these books that contain mystery, adventure and science fiction are reality? Let me know the next time you see someone flying by with supernatural powers, animals talking, dragons breathing fire and goblins living amongst us. . . . Please let me know and I'll contact the proper authorities," Lofredo said.

Lisa Berst, middle school librarian and a member of the library committee, said the books were recommended for their school's library shelves, in part, because of their popularity with students. The titles are: *Child of the Dark Prophecy,* by T.A. Baron; *The Supernaturalist,* by Eoin Colfer; *Whispers From the Dead,* by Joan Lowery Nixon; and the Bartimaeus Trilogy, which comprises *The Amulet of Samarkand, The Golem's Eye,* and *Ptolemy's Gate,* by Jonathan Stroud.

"They are books that have won awards . . . and were highly recommended by different literary sources, such as the *School Library Journal,* the *New York Times Book Review* . . . and I'm here to say that I hope you will reconsider, and let us put all of the books on the shelves with no stipulations," Berst said.

Ultimately, the board agreed to do just that, with Seitz and Board Member Patricia Bryniarski casting the two negative votes.

After the meeting, both women, along with Board Member Ronald Miller, said it was never the board's intention to ban the books. "We wanted parent accountability, not censorship," said Miller.

But parent Anne Marie Wlodarczyk insisted that, given the library committee's track record for selecting school library materials, that would have been entirely unnecessary. "I feel if our children cannot walk into their own school library and make their own choices from the selection of the reading material, what message are you—the School Board members—sending to our children?" Wlodarczyk said. Reported in: *The Buffalo News,* March 13.

Mississauga, Ontario

The Golden Compass is not leading young Catholic readers astray and the book can stay on its library bookshelves in Mississauga, the Dufferin-Peel Catholic District School Board has decided. A committee that reviewed *The Golden Compass,* which was made into an Oscar-nominated movie, has decided that the book, and two others in the popular series by author Philip Pullman, should not be removed from Catholic schools.

The Catholic board's Challenged Materials Review committee was asked to look at the book by Pullman, an avowed atheist, after a parent complained. The Halton Catholic Board had already banned the book.

Critics claim the stories are filled with anti-religious and anti-Catholic implications.

Program Superintendent Marianne Mazzorato said the sixteen-member committee of parents, trustees, principals, librarians, administrators, and program and religious education staff read all three books and determined that, while the books should not be part of regular lesson plans in elementary school classrooms, they should remain available in libraries. They will carry a sticker on the inside cover telling readers "representations of the church in this novel are purely fictional," and are not reflective of the real Roman Catholic Church or the Gospel of Jesus Christ.

Mazzorato pointed out the books are advanced reading material that does not appeal to the majority of elementary students. As part of the review, the board looked at how many of the books were in school libraries and checked how often they were signed out. "Interestingly enough, they weren't very popular books," she added.

In fact, a board report indicated that before recent controversy surfaced in advance of the movie opening, librarians were considering removing the trilogy to make room for more popular literature. "The books circulated very poorly over time due to their advanced reading level and were generally on track to be weeded," the report said. Sensitive or controversial material, Mazzorato added, is not necessarily a bad thing to have in classrooms. Such material can be used as a learning tool to promote critical literary thinking, she said. Reported in: *Mississauga News,* February 29.

Loudoun County, Virginia

The controversial children's book *And Tango Makes Three* returned to the general circulation shelves in the sixteen elementary school libraries of Loudoun County public schools March 3. That day, Superintendent Edgar B. Hatrick declared the challenge that led to the book being relocated to areas accessible only by parents and teachers to be invalid because the person who made the challenge was not a parent of a student at Sugarland Elementary School, where the challenge was made.

"I can assure you that I have put administrative measures in place to be sure that in the future any such requests will be managed carefully to be sure that policy procedures are followed carefully and fully," Hatrick wrote in a memo to the school board. "Since this policy is rarely implemented, staff is not as familiar with it as we are with other routines and therefore we must follow the steps of the policy as they are written. At every point in carrying out this policy at least two administrators will be double checking the process."

The school board gave preliminary approval March 4 to a revised book-review policy that clarifies the steps a parent should take to challenge materials and charges each school's principal with making the final decision. The revi-

sion was approved by a 4–1 vote over a similar proposal that vested the final decision with a committee appointed by the principal. The changes will be revised slightly to finalize language, and were expected to be adopted by the end of April.

The award-winning book tells the true story of chinstrap penguins Roy and Silo who live in New York's Central Park Zoo and hatch an egg together. They care for their chick, Tango, as a family.

And Tango Makes Three was moved from general circulation to the teachers' shelves at Loudoun elementary schools after Leesburg resident Sherrie Sawyer, a teacher's assistant at Sugarland Elementary School, complained about its subject matter. The book still could be checked out by teachers or parents.

Although the school's principal and a district-level committee recommended the book remain available to students, Hatrick determined the subject matter could be developmentally inappropriate for some young children. He said he considered several background facts to reach his decision, including that the book is only in fourteen of the county's forty-seven elementary schools, has been checked out a total of forty-nine times in those schools—some of which were by adults for review—and the controversy it has generated across the country.

"In the final analysis, I sought to provide a way that this book could remain in our elementary libraries to be checked out by teachers or parents to read with or to their students or children," Hatrick said. "I do believe that the implied subject matter is relevant to our modern society but also deserves some adult consideration in answering questions that young children may have about the family dynamic described." Reported in: *American Libraries* online, March 7; *Loudoun Times-Mirror,* February 27.

schools

Depew, New York

The Depew Board of Education voted 6–0 on March 4 to approve a controversial coming-of-age novel for 11th-grade Regents English classes. With member Diane Benczkowski absent, the board accepted the recommendation of Superintendent Kimberly Mueller and a seven-member review committee to allow the students to read John Green's *Looking for Alaska,* which contains graphic language and sexual content. Speaking for the board, Steven Carmina, board president, said the "overriding factor" in the decision was that "we put out a choice to our parents."

The district sent parents a letter in January saying that the book has "some explicit sexual content" but adding that it "addresses very pertinent and relevant issues that young adults deal with," including drinking and driving, peer pressure, and coping with death. Of the 160 students eligible to read the book, 140 returned permission slips. Of those, only three students were denied permission to read the book. Twenty parents did not respond, according to Assistant Superintendent Susan Frey, chair of the review committee.

A Separate Peace, by John Knowles, was offered as the alternate novel for the classes.

Looking for Alaska, which won the Michael L. Printz Award for Excellence in Young Adult Literature, tells the story of sixteen-year-old Miles Halter and his friends, including a teen girl, Alaska Young, at a boarding school in Alabama. Details can be found on the author's website, sparksflyup.com. "I Am Not a Pornographer," the author's video on YouTube, addressed the Depew controversy.

Speakers during the public comment period at the meeting included Gabrielle Miller, who was the first to publicly raise objections to the novel. "I never asked for the book to be burned or banned," she said. "I'm not on a power trip or trying to be a parent to other than my own son and daughter. . . . As a taxpayer and stakeholder I have a right to raise questions."

"The language is no different than what you would hear at a football game on Friday night," said Charlene Stanton, parent of a junior. She also cited several classics "that our students read," including *Hamlet* and *The Scarlet Letter,* whose themes include murder, incest, and suicide. Reported in: *Buffalo News,* March 5.

Cherry Hill, New Jersey

The Cherry Hill Board of Education unanimously approved a resolution to keep Harper Lee's *To Kill A Mockingbird* in the high school English curriculum when it met January 22. The vote was 8–0.

A resident had objected to the novel's depiction of how blacks are treated by members of a racist white community in an Alabama town during the Depression. The resident feared the book would upset black children reading it.

A committee including board members Sharon Giaccio and Lisa Conn, a teacher, an assistant principal, Director of Curriculum Claudia Lyles, Assistant Superintendent Lawyer Chapman, and Superintendent David Campbell determined the book should remain in the curriculum.

On February 15, all high school English teachers participated in an in-service training focused on the book, emphasizing sensitivity when addressing racism of any kind and better awareness of student reactions to such material. Teachers were directed not to read aloud or have students read aloud the offensive references to blacks, and to redesign the unit on the novel in ways similar to what was done with the unit *The Adventures of Huckleberry Finn* in 1996, when blacks objected to its content and the way it was being taught in the high schools.

"In 1996, we dealt with the Huck Finn issue and thought it was over. It wasn't. Students are still suffering," said Danny Elmore of the Cherry Hill African American

Civic Association. Reported in: *South Jersey Courier-Post,* January 24.

Odessa, Texas

A West Texas school district has agreed to change the curriculum for a high school course on the Bible to settle a lawsuit that said it amounted to religious indoctrination. The federal suit was filed by the American Civil Liberties Union and the People for the American Way Foundation on behalf of eight parents in the Odessa area. It argued that the course curriculum, adopted in 2005 by the Ector County Independent School District, promoted Protestant Christianity and a specific reading of the Bible as a literal historical document.

Public schools can teach the Bible if done in a neutral way. It cannot be taught as it would be in a Sunday school class, legal scholars said. As part of the settlement, the district agreed to use a new curriculum developed by a committee of local educators.

"It's great that the two parties were able to come together and work out a solution," the district's interim superintendent, Hector Mendez, said in a statement.

Jeremy Gunn, the director of the ACLU's program on freedom of religion and belief, said the settlement was not a judicial ruling that would bind other school districts. But he said he expected it to be "a serious wake-up call" to those considering using the same curriculum. "Anyone who is paying attention would realize that it's very risky to teach the course, because it is unconstitutional," Gunn said.

In the original complaint filed last May, the plaintiffs said the district established the elective Bible course through a process that was "improperly designed to promote religious instruction." The complaint said that the district empanelled a committee to research a suitable instructional model, and that the panel overwhelmingly endorsed the Bible Literacy Project curriculum, whose approach is secular and widely used in other districts.

But the school board chose materials from the National Council on Bible Curriculum in Public Schools. The suit asserted that the council did not teach the Bible in an objective way. The council says on its website that its materials are taught in 430 school districts in 37 states.

When the Ector County district approved the council's curriculum, the suit said, the district's director of curriculum and instruction, Shannon Baker, celebrated the decision in an e-mail message, which read in part, "Take that, you dang heathens!"

About forty students at two high schools, Odessa and Permian, take the course as an elective, Mendez said.

According to the suit, the course material treated "the story of the creation, the life of Noah and his ark," among other things, as accurate historical statements. Reported in: *New York Times,* March 6.

foreign

Tokyo, Japan

Japan's Supreme Court ruled February 19 that a collection of erotic photographs by the late Robert Mapplethorpe does not violate obscenity laws, a decision that should allow the sale of the book for the first time in eight years.

The decision overturned a 2003 Tokyo High Court ruling that the book *Mapplethorpe* was indecent, court spokesman Takashi Ando said. It was believed to be the first time the top court has overruled a lower court ruling on obscenity.

The court, however, rejected publisher Takashi Asai's demands for government compensation of 2.2 million yen ($20,370), Ando said. Asai, of Uplink publishers, had been fighting a 1999 confiscation of the book and his voluntary 2000 suspension on its sales after Tokyo Police warnings.

Mapplethorpe died of AIDS at age 42 in March 1989, but his images, including human bodies, sex, and nudity, have remained controversial. High-profile opposition forced the cancellation of an exhibition of his work in Washington, D.C., in 1989.

In the ruling, Justice Kohei Nasu said the book of black-and-white portraits "compiles works from the artistic point of view, and is not obscene as a whole," the conservative *Yomiuri* newspaper quoted the judge as saying. The decision, a majority opinion of the five-judge bench, also recognized Mapplethorpe as "an artist who has won high appreciation as a leading figure in contemporary art," Kyodo News agency reported.

Japanese customs have a long history of applying conservative obscenity standards by targeting all clear genital images in prints and films across the board, forcing film distributors and publishers to alter the parts, prompting criticisms by artists who said such measures insult their works.

Asai called the ruling "groundbreaking" and said it "could change the obscenity standard" used for banning foreign films that show nudity and censoring photographs in books.

In a commentary, the *Yomiuri* newspaper said that the Supreme Court ruling reflected a change in the concept of what constitutes obscenity. "Obscene images have spread on the Internet and are accessible to anyone. The supreme court must have decided that calling a highly acclaimed photographer's book 'obscenity' does not fit today's social norm," the *Yomiuri* said.

Asai had sold about 900 copies the Japanese version of *Mapplethorpe,* which was originally published by Random House, in Japan starting in 1994 without objection from authorities. But airport customs officials in Japan confiscated a copy he had with him when he returned from a trip to the U.S. in 1999. The 384-page book contained twenty close-up photos of male genitalia, and authorities considered it obscene. Asai said he suspended sales of

the Japanese edition of the book in May 2000 after Tokyo Metropolitan Police summoned him to the police station and warned him about the book.

In 2002, he won a case in Tokyo District Court and the government was ordered to return the confiscated copy of the book and pay 700,000 yen ($6,480) in damages. But the high court overturned that ruling a year later. Reported in: Associated Press, February 19. □

(librarians' . . . from page 85)

Popline officials also pulled the two articles, plus another five from the same issue of *A* from the database. Pledging to "work with our staff to reinforce their appreciation of the importance of academic integrity," Klag said, "Unfettered access to information is essential for informed debate and rational choices in any field, especially in family planning. The Johns Hopkins Bloomberg School of Public Health is dedicated to the advancement and dissemination of knowledge and not its restriction."

Loriene Roy, president of the American Library Association, applauded Klag's action, saying the restriction denied "researchers, students and individuals on all sides of the issue access to accurate scientific information."

Wayne Shields, president and CEO of the Association of Reproductive Health Professionals, said in a statement that restricting access to the information could possibly jeopardize patient care because it prevented doctors and women from linking to scientific literature on the topic.

"Removing abortion as a search term on a publicly funded reproductive health database is clearly a decision driven by ideology—and not based on the medical or scientific needs of the reproductive health professional community the database exists to serve," Shields said. Reported in: *American Libraries* online, April 11; Associated Press, April 5. □

(NSA . . . from page 88)

world's main international banking clearinghouse to track money movements.

The effort also ties into data from an ad-hoc collection of so-called black programs whose existence is undisclosed, the current and former officials say. Many of the programs in various agencies began years before the September 11 attacks but have since been given greater reach. Among them, current and former intelligence officials say, is a long-standing Treasury Department program to collect individual financial data including wire transfers and credit-card transactions.

It isn't clear how many of the different kinds of data are combined and analyzed together in one database by the NSA. An intelligence official said the agency's work links to about a dozen anti-terror programs in all.

A number of NSA employees have expressed concerns that the agency may be overstepping its authority by veering into domestic surveillance. And the constitutional question of whether the government can examine such a large array of information without violating an individual's reasonable expectation of privacy "has never really been resolved," said Suzanne Spaulding, a national-security lawyer who has worked for both parties on Capitol Hill.

NSA officials say the agency's own investigations remain focused only on foreign threats, but it's increasingly difficult to distinguish between domestic and international communications in a digital era, so they need to sweep up more information.

In response to the September 11 attacks, then–NSA chief Gen. Michael Hayden said he used his authority to expand the NSA's capabilities under a 1981 executive order governing the agency. Another presidential order issued shortly after the attacks, the text of which is classified, opened the door for the NSA to incorporate more domestic data in its searches, one senior intelligence official said.

The NSA "strictly follows laws and regulations designed to preserve every American's privacy rights under the Fourth Amendment to the U.S. Constitution," agency spokeswoman Judith Emmel said in a statement, referring to the protection against unreasonable searches and seizures. The Office of the Director of National Intelligence, which oversees the NSA in conjunction with the Pentagon, added in a statement that intelligence agencies operate "within an extensive legal and policy framework" and inform Congress of their activities "as required by the law." It pointed out that the 9/11 Commission recommended in 2004 that intelligence agencies analyze "all relevant sources of information" and share their databases.

Two former officials familiar with the data-sifting efforts said they work by starting with some sort of lead, like a phone number or Internet address. In partnership with the FBI, the systems then can track all domestic and foreign transactions of people associated with that item—and then the people who associated with them, and so on, casting a gradually wider net. An intelligence official described more of a rapid-response effect: if a person suspected of terrorist connections is believed to be in a U.S. city—for instance, Detroit, a community with a high concentration of Muslim Americans—the government's spy systems may be directed to collect and analyze all electronic communications into and out of the city.

The haul can include records of phone calls, e-mail headers and destinations, data on financial transactions, and records of Internet browsing. The system also would collect information about other people, including those in the United States, who communicated with people in Detroit.

The information doesn't generally include the contents of conversations or e-mails. But it can give such transactional information as a cell phone's location, whom a person is calling, and what websites he or she is visiting. For an e-mail, the data haul can include the identities of the sender and recipient and the subject line, but not the content of the message.

Intelligence agencies have used administrative subpoenas issued by the FBI—which don't need a judge's signature—to collect and analyze such data, current and former intelligence officials said. If that data provided "reasonable suspicion" that a person, whether foreign or from the United States, was linked to al Qaeda, intelligence officers could eavesdrop under the NSA's Terrorist Surveillance Program.

The White House wants to give companies that assist government surveillance immunity from lawsuits alleging an invasion of privacy, but Democrats in Congress have been blocking it. The Terrorist Surveillance Program has spurred thirty-eight lawsuits against companies. Current and former intelligence officials say telecom companies' concern comes chiefly because they are giving the government unlimited access to a copy of the flow of communications through a network of switches at U.S. telecommunications hubs that duplicate all the data running through it. It isn't clear whether the government or telecom companies control the switches, but companies process some of the data for the NSA, current and former officials say.

On March 7, the House Energy and Commerce Committee released a letter warning colleagues to look more deeply into how telecommunications data are being accessed, citing an allegation by the head of a New York-based computer security firm that a wireless carrier that hired him was giving unfettered access to data to an entity called "Quantico Circuit." Quantico is a Marine base that houses the FBI Academy; senior FBI official Anthony DiClemente said the bureau "does not have 'unfettered access' to any communication provider's network."

The political debate over the telecom information comes as intelligence agencies seek to change traditional definitions of how to balance privacy rights against investigative needs. Donald Kerr, the deputy director of national intelligence, told a conference of intelligence officials in October that the government needs new rules. Since many people routinely post details of their lives on social-networking sites such as MySpace, he said, their identity shouldn't need the same protection as in the past. Instead, only their "essential privacy," or "what they would wish to protect about their lives and affairs," should be veiled, he said, without providing examples.

The NSA uses its own high-powered version of social-network analysis to search for possible new patterns and links to terrorism. The Pentagon's experimental Total Information Awareness program, later renamed Terrorism Information Awareness, was an early research effort on the same concept, designed to bring together and analyze as much and as many varied kinds of data as possible. Congress eliminated funding for the program in 2003 before it began operating. But it permitted some of the research to continue and TIA technology to be used for foreign surveillance.

Some of it was shifted to the NSA—which also is funded by the Pentagon—and put in the so-called black budget, where it would receive less scrutiny and bolster other data-sifting efforts, current and former intelligence officials said. "When it got taken apart, it didn't get thrown away," says a former top government official familiar with the TIA program.

Two current officials also said the NSA's current combination of programs now largely mirrors the former TIA project. But the NSA offers less privacy protection. TIA developers researched ways to limit the use of the system for broad searches of individuals' data, such as requiring intelligence officers to get leads from other sources first. The NSA effort lacks those controls, as well as controls that it developed in the 1990s for an earlier data-sweeping attempt.

Sen. Ron Wyden, an Oregon Democrat and member of the Senate Intelligence Committee who led the charge to kill TIA, says "the administration is trying to bring as much of the philosophy of operation Total Information Awareness as it can into the programs they're using today." The issue has been overshadowed by the fight over telecoms' immunity, he said. "There's not been as much discussion in the Congress as there ought to be."

But Sen. Kit Bond of Missouri, the ranking Republican on the committee, said by e-mail his committee colleagues have had "ample opportunity for debate" behind closed doors and that each intelligence program has specific legal authorization and oversight. He cautioned against seeing a group of intelligence programs as "a mythical 'big brother' program," adding, "that's not what is happening today."

While the Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," the legality of data-sweeping relies on the government's interpretation of a 1979 Supreme Court ruling allowing records of phone calls—but not actual conversations—to be collected without a warrant.

The legality of data-sweeping relies largely on the government's interpretation of a 1979 Supreme Court ruling allowing records of phone calls—but not actual conversations—to be collected without a judge issuing a warrant. Multiple laws require a court order for so-called transactional records of electronic communications, but the 2001 PATRIOT Act lowered the standard for such an order in some cases, and in others made records accessible using FBI administrative subpoenas called "national security letters."

A debate is brewing among legal and technology scholars over whether there should be privacy protections when a wide variety of transactional data are brought together

to paint what is essentially a profile of an individual's behavior. "You know everything I'm doing, you know what happened, and you haven't listened to any of the contents" of the communications, said Susan Landau, co-author of a book on electronic privacy and a senior engineer at Sun Microsystems Laboratories. "Transactional information is remarkably revelatory."

Spaulding, the national-security lawyer, said it's "extremely questionable" to assume Americans don't have a reasonable expectation of privacy for data such as the subject-header of an e-mail or a Web address from an Internet search, because those are more like the content of a communication than a phone number. "These are questions that require discussion and debate," she said. "This is one of the problems with doing it all in secret."

Gen. Hayden, the former NSA chief and now Central Intelligence Agency director, in January 2006 publicly defended the activities of the Terrorist Surveillance Program after it was disclosed by the New York Times. He said it was "not a driftnet over Lackawanna or Fremont or Dearborn, grabbing all communications and then sifting them out." Rather, he said, it was carefully targeted at terrorists. However, some intelligence officials now say the broader NSA effort amounts to a driftnet. A portion of the activity, the NSA's access to domestic phone records, was disclosed by a USA Today article in 2006.

The NSA, which President Truman created in 1952 through a classified presidential order to be America's ears abroad, has for decades been the country's largest and most secretive intelligence agency. The order confined NSA spying to "foreign governments," and during the Cold War the NSA developed a reputation as the world's premier code-breaking operation. But in the 1970s, the NSA and other intelligence agencies were found to be using their spy tools to monitor Americans for political purposes. That led to the original FISA legislation in 1978, which included an explicit ban on the NSA eavesdropping in the United States without a warrant.

Big advances in telecommunications and database technology led to unprecedented data-collection efforts in the 1990s. One was the FBI's Carnivore program, which raised fears when it was in disclosed in 2000 that it might collect telecommunications information about law-abiding individuals. But the ground shifted after September 11. Requests for analysis of any data that might hint at terrorist activity flooded from the White House and other agencies into NSA's Fort Meade, Maryland, headquarters outside Washington, D.C., one former NSA official recalls. At the time, "We're scrambling, trying to find any piece of data we can to find the answers," the official said.

The 2002 congressional inquiry into the September 11 attacks criticized the NSA for holding back information, which NSA officials said they were doing to protect the privacy of U.S. citizens. "NSA did not want to be perceived as targeting individuals in the United States" and considered such surveillance the FBI's job, the inquiry concluded.

The NSA quietly redefined its role. Joint FBI-NSA projects "expanded exponentially," said Jack Cloonan, a longtime FBI veteran who investigated al Qaeda. He pointed to national-security letter requests: They rose from 8,500 in 2000 to 47,000 in 2005, according to a Justice Department inspector general's report last year. It also said the letters permitted the potentially illegal collection of thousands of records of people in the United States from 2003-05. On March 5, FBI Director Robert Mueller said the bureau had found additional instances in 2006.

It isn't known how many Americans' data have been swept into the NSA's systems. The Treasury, for instance, built its database "to look at all the world's financial transactions" and gave the NSA access to it about fifteen years ago, said a former NSA official. The data include domestic and international money flows between bank accounts and credit-card information, according to current and former intelligence officials.

The NSA receives from the Treasury weekly batches of this data and adds it to a database at its headquarters. Prior to September 11, the database was used to pursue specific leads, but afterward the effort was expanded to hunt for suspicious patterns.

Through the Treasury, the NSA also can access the database of the Society for Worldwide Interbank Financial Telecommunication, or SWIFT, the Belgium-based clearinghouse for records of international transactions between financial institutions, current and former officials said. The United States acknowledged in 2006 that the CIA and Treasury had access to SWIFT's database, but said the NSA's Terrorism Surveillance Program was separate and that the NSA provided only "technical assistance." A Treasury spokesman said the agency had no comment.

Through the Department of Homeland Security, airline passenger data also are accessed and analyzed for suspicious patterns, such as five unrelated people who repeatedly fly together, current and former intelligence officials said. Homeland Security shares information with other agencies only "on a limited basis," spokesman Russ Knocke said.

NSA gets access to the flow of data from telecommunications switches through the FBI, according to current and former officials. It also has a partnership with FBI's Digital Collection system, providing access to Internet providers and other companies. The existence of a shadow hub to copy information about AT&T telecommunications in San Francisco is alleged in a lawsuit against AT&T filed by the civil-liberties group Electronic Frontier Foundation, based on documents provided by a former AT&T official. In that lawsuit, a former technology adviser to the Federal Communications Commission says in a sworn declaration that there could be fifteen to twenty such operations around the country. Current and former intelligence officials confirmed a domestic network of hubs, but didn't know the number. "As a matter of policy and law, we can not discuss

matters that are classified," said FBI spokesman John Miller.

The budget for the NSA's data-sifting effort is classified, but one official estimated it surpasses $1 billion. The FBI is requesting to nearly double the budget for the Digital Collection System in 2009, compared with last year, requesting $42 million. "Not only do demands for information continue to increase, but also the requirement to facilitate information sharing does," says a budget justification document, noting an "expansion of electronic surveillance activity in frequency, sophistication, and linguistic needs." Reported in: *Wall Street Journal,* March 10. ☐

(Google inverstors . . . from page 89)

The company recommends that shareholders vote against the proposals.

This came on the heels of efforts by the Chinese government to tighten control of Internet content. China blocked Google's YouTube video-sharing website in March after the biggest pro-independence protests in twenty years began in Tibet. YouTube also has been blocked in Turkey for allegedly showing images that disrespected the country's founder, Mustafa Kemal Ataturk.

Harrington Investments is seeking the creation of a committee on human rights that would provide operating expenses necessary to review Google's practices in the United States and abroad and recommend policies.

In a second proposal, the New York City comptroller's office and St. Scholastica Monastery are recommending that investors approve rules that would force the company to "resist demands for censorship" and document cases when it is complying with censorship requests. They also are asking the company not to identify users in countries where political speech can be a crime, and to inform customers of its data-retention policies. Reported in: *San Jose Mercury-News,* March 26. ☐

(Jefferson Muzzle . . . from page 94)

Board reversed the campus action and effectively reinstated Barnes, though by then he had transferred to another institution. The intervention of the Foundation for Individual Rights in Education (FIRE) as well as of Washington, D.C., attorney Robert Corn-Revere undoubtedly enhanced his cause.

While college administrators properly protect their campuses against genuine threats, posed by students or others, Barnes' Facebook postings and other forms of protest could hardly be deemed to pose any such risk to campus security or safety. For extreme over-reaction to a student's disrespectful, even insulting, but clearly protected expression of genuine concern about a major building project, President Zaccari clearly merits a 2008 Jefferson Muzzle.

10) Brandeis University Administration

For chastising long-tenured political science professor Donald Hindley because of an explanatory reference to the use of the derogatory term "wetbacks" in describing Mexican-Americans, followed by a threatened termination of his faculty appointment and the placement of a monitor in his classroom, a 2008 Jefferson Muzzle goes to Brandeis University administration.

Since its founding in 1948, Brandeis University has excelled in research and learning, and has recruited many eminent scholars to its remarkable faculty—achievements appropriately recognized by the election of Brandeis to the elite Association of American Universities in 1985. Brandeis's record with regard to academic freedom and free expression has for the most part been exemplary, despite a unique set of challenges that have faced the nation's only non-sectarian Jewish-sponsored college or university.

In the fall of 2007, however, Professor Donald Hindley was taken to task for having explained in his course on Latin American Politics that Mexican migrants to the United States have been pejoratively termed "wetbacks." Several students complained to the administration about the classroom use of that derogatory term. The University's director of employment relations soon informed Professor Hindley that he had been deemed guilty of making "statements in class that were inappropriate, racial and discriminatory."

Accordingly, a letter from the provost on the same day notified Hindley that he faced the prospect of efforts to terminate his long-tenured faculty appointment. The provost's letter also informed him that a monitor would observe his classes until the provost was satisfied that he was "able to conduct [himself] appropriately in the classroom."

Despite a vigorous protest from the Brandeis faculty senate and expressions of deep concern by several outside organizations, the provost declined to modify the sanction or to provide Professor Hindley with the written explanation he had sought. A formal appeal lodged with the University's Committee on Faculty Rights and Responsibilities should have had the effect of suspending the classroom monitoring, but the provost declined to withdraw the monitor for the balance of the semester.

A professor's use of racially or otherwise derogatory language in the classroom could in extreme cases justify institutional sanctions—though only after a formal due process proceeding and, according to policies of the American Association of University Professors, only when (referring specifically to unwelcome sexual terms) "such speech or conduct is reasonably regarded as offensive and substantially impairs the academic or work opportunity of students . . . [and, in the classroom, only if it is] persistent, pervasive

and not germane to the subject matter."

Clearly the expression for which Professor Hindley was faulted falls very far short of this rigorous standard, by which responsible universities typically abide in their treatment of faculty classroom speech.

There is a special irony to the Hindley case. The eminent jurist whose name the university proudly bears—Supreme Court Justice Louis D. Brandeis—was an ardent and eloquent defender of free expression, noting that "it is the function of speech to free men from the bondage of irrational fears" and insisting that "only an emergency can justify repression." For its flagrant disregard of its patron's timeless principles of free speech, Brandeis University merits a 2008 Jefferson Muzzle.

11) Lewis Mills High School Principal Karissa Niehoff and School District Superintendent Paula Schwartz

For refusing to allow a student to run for class office because she posted on an Internet website crude comments criticizing school officials for their recent handling of a social event at the school, a 2008 Jefferson Muzzle goes to Lewis Mills High School principal Karissa Niehoff and school district superintendent Paula Schwartz.

In the spring semester of her junior year at Lewis S. Mills High School in Burlington, Connecticut, Avery Doninger became embroiled in a controversy with school principal Karissa Niehoff, and school district superintendent Paula Schwartz (now retired). The controversy centered on planning for "Jamfest," an annual music concert at the high school. Many of the facts surrounding the controversy are in dispute but this much is uncontroverted: Avery posted a blog entry on a social networking website Livejournal.com in which she disrespectfully criticized school administrators for their handling of Jamfest and entreated members of the Livejournal community to express their opinion on the matter to school officials. In relevant part, Avery wrote: "jamfest is cancelled due to douchebags in central office. . . . basically, because we sent [the original Jamfest e-mail] out, Paula Schwartz is getting a TON of phone calls and emails and such. . . . however, she got pissed off and decided to just cancel the whole thing all together, and so basically we aren't going to have it at all, but in the slightest chance we do[,] it is going to be after the talent show on may 18."

In addition, Avery attached an e-mail that her mother had written to Superintendent Schwartz and Principal Niehoff about Jamfest so that the blog readers could "get an idea of what to write if you want to write something or call [Ms. Schwartz] to piss her off more." Avery posted the entry after school hours on a computer not owned by the school.

The issue did not arise again until Avery went to the principal's office on May 17, 2007, to accept her nomination for Senior Class Secretary. While she was there, Principal Niehoff asked to speak with Avery and showed her a hard copy of the livejournal.com blog entry. Superintendent Schwartz had earlier forwarded a link to the blog to Ms. Niehoff. At the May 17 meeting, Principal Niehoff asked Avery to do three things: (1) apologize to Superintendent Schwartz for the blog entry, (2) show the entry to Avery's mother, and (3) recuse herself from running for reelection. Avery agreed to the first two requests, but refused to withdraw her candidacy for senior class secretary.

At that point, Principal Niehoff told Avery that school officials would not provide the necessary administrative endorsement of Avery's nomination, meaning that Avery was effectively barred from participating in the upcoming class officer elections. Principal Niehoff stated that her decision was based on Avery's failure to accept her prior suggestions regarding the proper means of expressing disagreement with administration policy and seeking to resolve those disagreements, and also because the blog posting included vulgar language and inaccurate information. Finally, the blog also encouraged citizens to contact the central office "to piss [Superintendent Schwartz] off more," which Principal Niehoff did not consider an appropriate action by a class officer.

Despite the fact her name was not on the ballot, Avery won a plurality of votes for class secretary as a write-in candidate, but was not allowed to assume the position. In response, Avery's mother filed a federal lawsuit on Avery's behalf seeking, on First Amendment grounds, a preliminary injunction to allow Avery to serve as senior class secretary. A federal district court judge denied Avery's request, essentially finding that the actions of Principal Niehoff and Superintendent Schwartz did not violate Avery's First Amendment rights. The case was appealed to the U.S. Court of Appeals for the Second Circuit where it is now pending. [It should be disclosed that the Thomas Jefferson Center for the Protection of Free Expression filed a friend of the court brief in the Second Circuit Court of Appeals on behalf of Avery.]

High school students' not-so-nice comments about teachers and principals are neither uncommon nor new. Students today, however, have the means to disseminate their views to a large audience easily via the Internet. The incident involving Avery Doninger is just a recent example of a trend of public school attempts to discipline students for expression on the Internet. While officials understandably may be upset by having derogatory comments about them widely disseminated, the fact remains that such expression is taking place off school property in situations where school officials should have no authority over students. Moreover, in Avery's case, although her language was admittedly crude, it nonetheless involved encouraging community involvement in a political issue, something we should applaud young people for doing. Rather, by disregarding the results of an election that Avery won as a write-in candidate, Principal Niehoff and Superintendent Schwartz discouraged both Avery's activism and the civic involvement of the Lewis Mill High School students who participated in the election. For teaching such a

discouraging lesson about political involvement and expression, Principal Niehoff and Superintendent Schwartz earn a 2008 Jefferson Muzzle.

12) Senator Jay Rockefeller (D-WV)

For seeking, among other forms of heightened regulation, a Congressional mandate that the Federal Communications Commission (in enforcing the statutory ban on "indecent" programming) shall "maintain a policy that a single word or image may be considered indecent," a 2008 Jefferson goes to Senator Jay Rockefeller (D-WV).

Since 1934, the laws that provide for the licensing and regulation of broadcasters have empowered the Federal Communications Commission to impose sanctions for airing program material that is "obscene, indecent or profane." Until the early years of this century, such material was seldom targeted unless it was pervasive and substantial—an approach that the U.S. Supreme Court had sustained in the *Pacifica* ruling in 1978.

But under intense public and Congressional pressure in 2004, the FCC substantially expanded its view of indecency, ruling that even "fleeting expletives" and comparable images were inherently subject to the statutory ban. Any use of the *F*-word, for example, was now inherently sexual while any use of the "s" word was presumptively excretory.

Senator Rockefeller has actively led recent efforts to extend federal regulation of the airwaves even further. In 2005 he proposed the "Indecent and Gratuitous and Excessively Violent Programming Control Act," which would have extended FCC authority regarding such content to cable and even to such other historically unregulated electronic media as satellite and direct broadcasting. Explaining the rationale for substantially expanding regulatory power in this way, he asserted that "for our children, there is little or no meaningful distinction between the broadcasters and cable producers"—thus slighting the profound technical and legal differences that courts and lawmakers have long recognized. Although this proposal failed to emerge from committee, Senator Rockefeller's regulatory efforts have persisted, and have attracted other followers in and beyond Congress.

The "Protecting Children from Indecent Programming" bill, offered in July 2007, contains the most recent evidence of Senator Rockefeller's regulatory zeal. Specifically, it would codify the FCC's "fleeting expletive" ruling by requiring the Commission "to maintain a policy that a single word or image may be considered indecent." The enactment of such a mandate would leave the Commission little latitude in the enforcement of the "indecency" ban even to incidental or accidental use of salacious words or suggestive visual imagery.

Senator Rockefeller's zealous call for heightened control of broadcast content comes with a special irony. Sharon Percy Rockefeller, the Senator's spouse, has long chaired the Board of WETA, the flagship station of the Public Broadcasting System. While public broadcasters might be less critically or directly affected by such increased censorship of the airwaves than their network and other commercial counterparts, there seems little doubt that the impact across broadcasting could be severe and could further inhibit freedom of expression in this vital medium of communication, entertainment, and information. For his persistent insensitivity to that freedom, approaching even at times a vindictive level, Senator Jay Rockefeller merits a 2008 Jefferson Muzzle.

13) The Texas Democratic Party

For refusing to allow Democratic Presidential candidate Dennis Kucinich to appear on the Texas Democratic primary ballot because he refused to sign a section of the oath on his ballot form that promised he would "fully support" the eventual Democratic nominee, a 2008 Jefferson Muzzle goes to the Texas Democratic Party.

State political parties often seek commitments from candidates to certain party principles, and occasionally even expecting future support of the eventual nominee from those who do not prevail in the primaries. Texas Democrats, however, carried the process substantially further in the 2008 primary season. The ballot application form contained a mandatory oath that every candidate would pledge him or herself to "fully support" the eventual nominee if he or she did not prevail.

Apparently all but one of the surviving Democratic candidates were willing to make such a commitment. U.S. Rep. Dennis Kucinich (D-OH) declined to take the oath, insisting that his vehement opposition to the Iraq war might prevent him, in good conscience, from supporting a nominee whose views on that issue (and possibly others) differed markedly from his. (He had signed such an oath in 2004, but noted that the Iraq issue had intensified since that time.) Democratic Party officials were adamant, and refused to place his name on the primary ballot.

Kucinich and supporter Willie Nelson then filed suit in federal district court, claiming a violation of the candidate's First Amendment rights. The federal judge dismissed the suit, noting that courts should intervene sparingly in the political process; though he recognized that the oath may have been "inartfully worded," its imposition on Democratic candidates did not in his view abridge constitutional liberties.

One parallel occurred during the 2008 primary season, but eventually had a different outcome. Virginia's Republican Party initially sought a comparable commitment from voters seeking to participate in the GOP primary, but when the condition received abundant criticism (much of it from Republicans), Virginia's Republican leadership abandoned their effort, leaving Texas Democrats as the only intransigent state party organization.

Freedom of speech includes both the right to speak and the right NOT to speak against one's will. Although some degree of commitment and loyalty may reasonably be expected of candidates who seek to appear on primary ballots, the oath that Texas Democrats imposed on all 2008 presidential candidate so far exceeded those needs, and so clearly constrained the political and expressive freedoms of presidential candidates that it warrants a Jefferson Muzzle.

14) The Federal Communications Commission, recipient of the second Lifetime Muzzle ever awarded

For years of applying inconsistent (if not arbitrary) standards in determining what is "indecent" on broadcast airwaves—regardless of the political party in control of the Congress or the White House—the second Lifetime Jefferson Muzzle ever awarded goes to The Federal Communications Commission.

In the early summer of 2007, the U.S. Court of Appeals for the Second Circuit, in the course of rebuking the Federal Communications Commission for its recent handling of "indecency" charges against licensed broadcasters, cautioned that "the FCC is free to regulate indecency, but its regulatory powers are bounded by the Constitution."

The court concluded by declaring itself "doubtful that by merely proffering a reasoned analysis for its new approach to indecency and profanity, the Commission can adequately respond to the constitutional and statutory challenges raised by the Networks." The appellate judges noted earlier in the opinion that "the FCC's indecency test raises the separate constitutional question whether it permits the FCC to sanction speech based on its subjective view of the merit of that speech." On March 17, the Supreme Court agreed to review the Second Circuit's ruling, though oral argument will not occur until fall and a decision is unlikely before spring of 2009.

The current clash between FCC regulation of broadcast content and freedom of expression is but the most recent in a long series of transgressions that in the judgment of the Thomas Jefferson Center's Board of Trustees warrant the awarding to the Commission of only the second "Lifetime" Jefferson Muzzle in the seventeen years of the Muzzles.

A brief review of the background of prior FCC actions provide the rationale for this extraordinary indictment. Since 1934, the Commission has been empowered to sanction licensed broadcasters for airing material that is "obscene, indecent or profane." The meaning of the first of these terms is relatively clear: "obscenity" has been defined in detail by the Supreme Court in cases involving print communications. Difficulties surround the other key terms, most notably "indecent."

In the late 1970s, the Supreme Court affirmed the Commission's power to regulate indecent speech. The Court upheld the sanction imposed on Pacifica Broadcasting for airing in the mid-afternoon the full text of a George Carlin monologue, rich in profane and vulgar terms, including the notorious "seven dirty words," which earlier FCC rulings had identified as potentially unprotected. In so ruling, the justices recognized that licensed broadcasters enjoy rights of expression less extensive than those of the print media, noting both the "uniquely pervasive presence" of the broadcast media "in the lives of all Americans" and the fact that "broadcasting is uniquely accessible to children."

In later rulings, the high court progressively and sharply narrowed the scope of the *Pacifica* doctrine. Most notably, in 1997 the justices unanimously rejected *Pacifica*'s potential application to the Internet, citing the special circumstances both of the sanctioned broadcast and of the Commission's focus (for example, that the challenged order designated "when—rather than whether—it was permissible to air such a program in that particular medium").

Yet, in the intervening three decades, the FCC has actually expanded, rather than narrowed, the scope of its claimed authority to regulate "indecent" and even "profane" material. Notable steps along this path prompt the awarding of this second Lifetime Jefferson Muzzle to the Commission:

Citing chiefly the salacious language used by "shock-jock" Howard Stern, the Commission imposed a record $1.7 million in penalties on Infinity Broadcasting during the course Stern's employment there. Ironically, the sanctions targeted not only Stern's liberal use of vulgar and taboo words, but also his occasional and clearly disrespectful mockery of the Commission itself.

In May 2001, the Commission issued a Notice of Apparent Liability to an Oregon non-public radio station for airing a controversial song by Sarah Jones, but then failed to take further action. Jones's songs were then spurned by other broadcasters, who feared liability for airing them. Only when Jones herself brought suit in federal court did the FCC revisit the particular song, announcing, the day before the Government's response was due, that it considered the song not indecent.

Based on a "wardrobe malfunction" that exposed singer Janet Jackson's breast for 1/16 of a second during her half-time performance at the 2004 Super Bowl, the Commission imposed a record $550,000 fine on CBS.

Also in 2004, over 150 ABC television stations declined to air the acclaimed film *Saving Private Ryan* on Thanksgiving Day, fearing possible FCC charges based on the use of salty battlefield language and violent wartime imagery. Four months later, in March 2005, the Commission ruled that the film involved acceptable use of language and imagery "integral to [a] film's objective of conveying the horrors of war through the eyes of . . . soldiers." A later Commission condemnation of strikingly similar language in "NYPD Blue" revealed that no such sensitivity protects portrayals of New York City police officers in the traumatic aftermath of the September 11, 2001 terrorist attacks, although the FCC did not impose a fine on ABC in that situation.

Such regulatory vagaries led the Second Circuit Court of Appeals to describe itself as "hard pressed to imagine a regime that is more vague than one that relies on consideration of the otherwise unspecified 'context' of broadcast indecency."

Indeed, as late as 2001, the Commission formally insisted that "indecency" would be charged only if the suspect material "described or depicted sexual or excretory organs or activities" and that the broadcast must be "patently offensive as measured by contemporary community standards for the broadcast industry." Thus "fleeting expletives" could not be deemed indecent. But, barely three years later—with no change in the enabling legislation or applicable court rulings—the Commission completely reversed itself; its Golden Globes II ruling declared that any use of the "f" word was now presumptively sexual and any use of the "s" word was presumptively excretory.

The clearest application of this radically new doctrine came in an omnibus order by the Commission in March 2006. The order targeted a wide variety of broadcaster transgressions, including some that the Commission deemed inappropriate for formal sanctions because the offending broadcasts preceded Golden Globes II. This pre-Golden Globes II material is labeled presumptively indecent, but the absence of sanctions deprives those broadcasters of any opportunity for court review of the FCC's determination, preventing any possible vindication.

In addition to making "fleeting expletives" and similarly evanescent images subject for the first time to legal sanctions, the FCC's current posture on obscene, indecent, and profane speech fosters deep concerns in two related, but quite different dimensions. The first is the long dormant concept of "profane," embedded in the statute since 1927, but not until very recently cited as an independent (that is, apart from indecency) basis for broadcaster liability. Golden Globes II and the omnibus 2006 order leave no doubt that the Commission now regards as potentially sanctionable much salacious language that is not "indecent" even under the newly-expanded criteria, but is vulgar or "profane." This approach is a radical and ominous departure.

Finally, the current Commission (and notably, its chairman) have advocated the extension of its regulatory power over content beyond licensed broadcasters, to include cable operators and satellite and direct communications as well. While Congress has shown little enthusiasm for the radical expansion of statutory power necessary for any such regulation, the prospect has been raised and must be taken seriously. The Supreme Court's position on this issue has been consistent and unambiguous: other communications and entertainment media (not only the Internet but cable and a fortiori satellite and direct) are constitutionally and technologically different, and thus are not candidates for content regulation.

There can be no doubt that the Federal Communications Commission bears a heavy responsibility for the guidance and regulation of a vast and increasingly complex array of mass media. Nor is there any question that the Commission has been legally empowered to sanction broadcast material that it finds to be obscene or indecent for over seventy years. Yet, as the Second Circuit Appeals Court so wisely observed last summer, "the FCC is free to regulate indecency, but its regulatory powers are bounded by the Constitution." The Commission in recent years seems to not fully appreciate or value that imperative, and accordingly merits a Lifetime Jefferson Muzzle Award. □

(censorship dateline . . . from page 102)

ered it in the crime section of the library.

Published by HarperCollins and written by Jonny Trunk, the book features obscene letters written to Trunk's sister, a soft porn star, as well as pages of explicit photographs. *Time Out* magazine called it "hilarious, tragic and oddly moving."

Keeling said: "I think it is disgusting. Any child that goes in the library can read whatever books are there. It is a public library. I know they have to cater for everybody but if they do have to have something like this, it should be in a special section, it shouldn't be where kids can see it. Children have homework and often have to use the internet. Sometimes when my computer is down, my daughter has to go to the library and she is 13. I'm just so angry, I'm furious."

Buxton Library reopened at the start of March after undergoing a £24,000 makeover that included the creation of a café-style environment to encourage more young people to visit the facility.

The work also involved the creation of a new area designated for young people, called HeadSpace, as part of a national project to encourage teenagers to read more and use libraries.

A spokesperson for Derbyshire County Council said: "We follow national guidelines produced by the Chartered Institute for Library and Information Professionals when stocking our libraries. We cater for a wide range of interests and tastes and of the 150,000 books we buy each year, not every book will suit every reader. As with any high street book shop, library users are free to peruse the shelves but we do have separate sections for children and adults." Reported in: *Buxton Advertiser,* March 27.

St. Petersburg, Russia

A Russian court has ordered a university that receives support from western organizations and had offered courses in election monitoring to shut down immediately, in what professors said was the first time an entire university had been closed for political reasons under President Vladimir V. Putin.

The ruling, issued by a court in St. Petersburg February 8 shut down the European University of St. Petersburg just as a new semester was about to start and after many of the 170 students who were scheduled to attend had arrived in the city. Putin had criticized the university last fall, accusing it of meddling in Russian politics, according to news reports, and a highly placed government official raised similar concerns in late December.

The order to close came despite the university's decision to shut down a major program on election monitoring as too political, with Russia's presidential election coming up on March 2.

The court's ruling did not mention politics. Instead, it upheld a decision by the city's fire department that the university's historic buildings were unsafe for students because of fire hazards. The institution's president, Nikolai Vakhtin, disputed that finding. "We were totally shocked on Friday when the fire inspector announced their verdict to us," Vakhtin said. "Our university had never had even any complaints from fire or any other inspections since 1996, when it began its work. There is a dark cloud of uncertainty hanging over our university. I keep hoping and telling our students that we will solve our problems and reopen our university."

While denying the fire-safety accusations, Vakhtin declined to say whether he believed the closing was political.

The university, which was supported in part by grants from the Ford, MacArthur, and Soros foundations, offered master's degrees in economics, ethnology, history, and political science/sociology. Its diplomas were issued in conjunction with the University of Helsinki, in Finland. It also provided programs in the humanities, including an art-history program that offered special access to the treasures of the State Hermitage Museum, which holds one of the world's largest repositories of art in the world.

Liberal politicians in St. Petersburg, journalists, and professors familiar with the European University described it as a well-known island of liberal ideas for its offering of courses on human rights and democratic institutions. Its political troubles started last year, when the university won a European Commission grant worth about $900,000 for a project intended to improve the monitoring of elections in Russia. The political-science faculty created a regional network to provide research materials on regional and federal elections and prepared a course for political-party workers on election law.

"If we saw violations of election law, we openly talked about," said Grigory Golosov, a professor of sociology and political science who led the project. Golosov said the university was closed because of his project, even though the program had already shut down. The university closed the project on January 31. Golosov said no formal explanation was provided for the closure, and Vakhtin, the president, declined to discuss it.

Golosov suggested that the closure might have unintended consequences for elected officials. "Authorities do not understand what a big mistake they are making," he said. "Now they are supported by the majority of Russians, but very soon, depending on the country's state of economy, the majority might change their mind and say the election was fake. Our project was needed to avoid such outcomes," he said.

During Putin's eight years in office, his government has shut down a number of human-rights groups, non-governmental organizations, and political parties, usually citing technical reasons but often with suggestions that the organizations were interfering in Russian politics. Most recently, two English-language schools operated by the British Council were closed in January. Authorities said the schools, in Yekaterinburg and St. Petersburg, were closed for lacking licenses, but some politicians accused the council of using the schools to recruit spies.

"The totalitarian system has once again shown that it has no tolerance of criticism," said Maxim Reznik, a leader of the opposition Yabloko party in St. Petersburg. "Opposition candidates have no chance to register," he said, adding that western-supported organizations "get on the Kremlin's blacklists, and now the whole university is being closed for its fair and genuine research about elections." Reported in: *Chronicle of Higher Education* online, February 12. ☐

(from the bench . . . from page 106)

"The requirement of such a high level of proof may reflect a refined estrangement from reality, but apply it we must," he said. "Indeed, a good deal of the Bible portrays scenes of violence, and one would be hard-pressed to hold up as a proper role model the regicidal Macbeth," Wollman wrote.

"Although some might say that it is risible to compare the violence depicted in the examples [of violent games] offered by the State to that described in classical literature, such violence has been deemed by our court worthy of First Amendment protection, and there the matter stands." Reported in: *Minneapolis Star-Tribune,* March 17. ☐

(is it legal? . . . from page 114)

apartment, but instead having the landlord give them the keys to every apartment in the building. In February 2006, an FBI technical unit noticed "a surge in data being collected" as part of a national security investigation, according to an internal bureau report. An Internet provider was supposed to be providing access to the e-mail of a single target of that investigation, but the FBI soon realized that the

filtering controls used by the company "were improperly set and appeared to be collecting data on the entire e-mail domain" used by the individual, according to the report.

The bureau had first gotten authorization from the Foreign Intelligence Surveillance Court to monitor the e-mail of the individual target ten months earlier, in April 2005, according to the internal FBI document. But Michael Kortan, an FBI spokesman, said in an interview that the problem with the unfiltered e-mail went on for just a few days before it was discovered and fixed. "It was unintentional on their part," he said.

Kortan would not disclose the name of the Internet provider or the network domain because the national security investigation, which is classified, is continuing. The improperly collected e-mail was first segregated from the court-authorized data and later was destroyed through unspecified means. The individuals whose e-mail was collected apparently were never informed of the problem. Kortan said he could not say how much e-mail was mistakenly collected as a result of the error, but he said the volume "was enough to get our attention." Peter Eckersley, a staff technologist for the Electronic Frontier Foundation who reviewed the documents, said it would most likely have taken hundreds or perhaps thousands of extra messages to produce the type of "surge" described in the FBI's internal reports.

Kortan said that once the problem was detected, the foreign intelligence court was notified, along with the Intelligence Oversight Board, which receives reports of possible wiretapping violations. "This was a technical glitch in an area of evolving tools and technology and fast-paced investigations," Kortan said. "We moved quickly to resolve it and stop it. The system worked exactly the way it's designed." Reported in: *New York Times,* February 17.

New York, New York

The military is using the FBI to skirt legal restrictions on domestic surveillance to obtain private records of Americans' Internet service providers, financial institutions, and telephone companies, the ACLU said April 1. The American Civil Liberties Union based its conclusion on a review of more than 1,000 documents turned over by the Defense Department after it sued the agency last year for documents related to national security letters. The lawsuit was filed in Manhattan federal court.

The letters are investigative tools used to compel businesses to turn over customer information without a judge's order or grand jury subpoena. ACLU lawyer Melissa Goodman said the documents the civil rights group studied "make us incredibly concerned that the FBI and Department of Defense might be collaborating to evade limits put on the DOD's use of NSLs."

It would be understandable if the military relied on help from the FBI on joint investigations, but not when the FBI was not involved in a probe, she said.

Goodman, a staff attorney with the ACLU National Security Project, said the military is allowed to demand financial and credit records in certain instances but does not have the authority to get e-mail and phone records or lists of websites that people have visited. That is the kind of information that the FBI can get by using a national security letter, she said.

"That's why we're particularly concerned. The DOD may be accessing the kinds of records they are not allowed to get," she said.

Goodman also noted that legal limits are placed on the DOD "because the military doing domestic investigations tends to make us leery."

In other allegations, the ACLU said that the Navy's use of the letters to demand domestic records has increased significantly since the September 11 attacks; the military wrongly claimed its use of the letters was limited to investigating only DOD employees; the DOD has not kept track of how many national security letters the military issues or what information it obtained through the orders; and the military provided misleading information to Congress and silenced letter recipients from speaking out about the records requests.

Goodman said Congress should provide stricter guidelines and meaningful oversight of how the military and FBI make national security letter requests. "Any government agency's ability to demand these kinds of personal, financial or Internet records in the United States is an intrusive surveillance power," she said. Reported in: *San Jose Mercury-News,* April 1.

bookselling

Indianapolis, Indiana

A new state law that requires sellers of adult material to register with the state has Hoosier bookstore owners fuming about government censorship and threatening a legal challenge. "This lumps us in with businesses that sell things that you can't even mention in a family newspaper," said Ernie Ford, owner of Fine Print Book Store in Greencastle.

Ford was talking about House Enrolled Act 1042, which Governor Mitch Daniels signed into law in March. Ford was one of fifteen independent Indiana booksellers who signed a letter urging Daniels to veto the legislation.

The new law that takes effect July 1 requires businesses that sell sexually explicit material to pay a $250 fee and register with the secretary of state, which would then pass the information to municipal or county officials so they can monitor the businesses for potential violations of local ordinances. The bill was aimed specifically at helping counties that do not have zoning ordinances track businesses selling sexually explicit material, including videos, magazines, and books, said Sen. Brent Steele, R-Bedford, who was a co-sponsor of the legislation.

Steele said the bill's author, Rep. Terry Goodin, D-Austin, was targeting adult stores popping up in rural areas along interstates in Southern Indiana.

Jane Jankowski, the governor's spokeswoman, said that Daniels' office has no record of receiving the letter from booksellers. "[The bill] received strong support in both houses; no complaints were brought to our attention as it worked its way through the legislative process," she said.

Steele said he believed bookstore owners are getting worked up over nothing. The law does not apply to businesses that sell sexually explicit material on or before June 30; it applies only to new businesses, those that relocate or businesses that begin offering such material after that date. "I just don't think that their concern is legitimate," Steele said.

But groups representing state and national booksellers say the law casts its net too wide. A legal scholar agrees, calling it overly broad and so ambiguous that it may violate constitutional rights. "The way we read this bill, if you stock a single book with sexual content—even a novel or a book about sex education—you will have to register as a business that sells sexually explicit material," said Chris Finan, president of American Booksellers Foundation for Free Expression.

"This is just outrageous from our standpoint, and we believe it is a violation of the First Amendment."

While the law does not prohibit stores from selling a book with sexual content, he said, it has a chilling effect that could force sellers to limit the scope of their offerings or get out of the business rather than being placed on a state list of businesses that sell sexually explicit works.

Finan said his group will ask the Media Coalition—a New York-based group that defends Americans' First Amendment right to produce and sell books, movies, magazines, recordings, DVDs, videotapes, and video games, as well as the public's right to have access to the broadest possible range of opinion and entertainment—to take legal action to overturn the legislation.

Finan added that the association is not aware of similar laws in any other states. If it goes unchallenged in Indiana, he said, other states might try to enact similar regulations.

"I think this is very hypocritical," said Elizabeth Barden, owner of Big Hat Books on the Northside. "On the one hand, we feel a need to censor ourselves, while on the other hand, we are spending our tax dollars to free the hearts and minds of the Iraqi people." Barden said the law could potentially cover "just about any coming-of-age novel and books on health, hygiene and human sexuality."

Henry Karlson, a professor at Indiana University School of Law-Indianapolis and a First Amendment expert, said he sees several potential flaws in the law. One is the threshold it cites for having to file with the state. It relies on a statute that describes sexually explicit material that can be viewed as "harmful" to minors, including material that "appeals to the prurient interest in sex of minors."

"The problem is, minors have an interest in sex, prurient or otherwise," Karlson said, "and how do you distinguish what is normal and what is prurient?"

Another provision of the statute requires registration if a business carries an item when "considered as a whole, lacks serious literary, artistic, political or scientific value for minors." While such a definition is pretty clear for adults, Karlson said, that is not the case when it involves minors. "I can see some communities where people might think some of the literary classics did not meet that standard for minors," he said.

Karlson said he thinks businesses may have trouble knowing whether to register. "There's this huge gray area," he said. "If you register, you get lumped in with businesses that sell pornography and other sexually explicit material on some state list, and if you don't, you could face a fine or charges." Reported in: *Indianapolis Star,* March 26.

broadcasting

Washington, D.C.

In an unusual move, the Justice Department sued Fox Broadcasting and another broadcaster April 4 to collect $56,000 in fines for the broadcast of a raunchy reality show in 2003 that included scenes from bachelor and bachelorette parties.

Fox's *Married by America* included the "thrusting of a male stripper's crotch into a woman's face" in one show in addition to other scenes the agency found objectionable, according to a complaint filed in the U.S. District Court for the District of Columbia.

In October 2004, the FCC issued a $7,000 fine against 169 Fox-affiliated stations totaling $1.2 million. The fines were assessed regardless of whether a complaint was lodged against a particular station. Fox challenged the FCC's action and last month the FCC dropped the complaints against all but 13 stations, which were the subject of actual viewer complaints. The move lowered the total fine to $91,000.

Despite the decision, Fox, a division of Rupert Murdoch's News Corporation, said it would not pay the fines because the FCC's decision in the case was "arbitrary and capricious, inconsistent with precedent and patently unconstitutional."

The company appealed again, but the FCC "returned without consideration" its claim, saying it was fourteen pages over the limit. The agency said the company did not ask permission to exceed those page limits. Fox dubbed the FCC decision "offensive."

Since the FCC's February action, four stations have paid the fine and another station was dropped because no complaint was filed against it, leaving eight stations and $56,000 in fines. Five of the eight stations are owned by Fox, three are owned by the Sinclair Broadcast Group.

The Justice Department brought suit in Washington,

D.C., Iowa, West Virginia, and Tennessee. The action has been part of an aggressive campaign by the government to enforce indecency rules on television. In March, the U.S. Supreme Court agreed to hear a case involving Fox and the broadcast of fleeting expletives, the first such broadcast indecency case to be heard by the high court since 1978.

ABC, which is owned by Walt Disney Co., paid FCC fines totaling $1.2 million involving a 2003 airing of an *NYPD Blue* episode in which a woman's bare buttocks were shown. But the company decided it would challenge the agency's ruling in court.

"We have an obligation to protect our children by enforcing laws restricting indecent content on television and radio," said FCC spokeswoman Mary Diamond. "For four years, News Corp. has failed to take responsibility for airing indecent programming during *Married by America*. It is long past time for the company to accept responsibility and pay its fines."

Fox spokesman Scott Grogin in a brief statement said, "We look forward to the opportunity to present the full factual and legal arguments in the *Married by America* case to an impartial and open court of law."

It is unusual for an indecency fine to be challenged in federal court. Most cases are resolved at the administrative level within the agency. The case against Fox will essentially start from scratch in a "trial de novo."

The stations still subject to the fine are in Tampa, Florida; Detroit, Michigan; Washington, D.C.; Kansas City, Missouri.; Des Moines, Iowa; Minneapolis, Minnesota; Nashville, Tennessee; and Charleston, West Virginia.

The six-episode *Married by America* series introduced a cast of single men and women and allowed viewers to match them up by popular vote. Five matched couples then went through dating rituals, debauchery, and whipped cream, but none married. Reported in: Associated Press, April 4.

Internet

New Orleans, Louisiana

The family of a teenage girl who says she was sexually assaulted by a nineteen-year-old man she met on MySpace.com asked a federal appeals court March 31 to revive their lawsuit against the social networking website. A federal judge in Austin, Texas, dismissed the $30 million suit in February 2007, rejecting the family's claim that MySpace has a legal duty to protect its young users from sexual predators.

U.S. District Court Judge Sam Sparks also ruled that interactive computer services like MySpace are immune from such lawsuits under the Communications Decency Act of 1996.

The girl's family asked the U.S. Court of Appeals for the Fifth Circuit in New Orleans to overturn Sparks' rulings. A three-judge panel heard arguments from lawyers on both sides of the case, but didn't immediately rule on the appeal.

Harry Reasoner, a lawyer for MySpace and News Corporation, said Congress enacted the 1996 law to promote the growth of the Internet and protect online companies from tort litigation. "That doesn't leave it unregulated," Reasoner told the judges. "Any of these websites can be prosecuted for criminal conduct."

Gregory Coleman, a lawyer for the girl's family, said the law only gives MySpace a "limited shield" from liability. "It has a responsibility to (protect) children," he said.

The girl, identified as Julie Doe in court papers, was thirteen when she created a MySpace profile in 2005. MySpace requires users to be at least fourteen, but the girl misrepresented herself as eighteen years old. She was fourteen when Pete Solis, then nineteen, contacted her through MySpace and corresponded for several weeks before he allegedly sexually assaulted her during a meeting in a Travis County, Texas, parking lot in May 2006.

The girl's mother reported the alleged assault to police a day later. Solis, of Buda, Texas, later was indicted on a sexual assault charge—a felony punishable by a twenty-year prison sentence—and is awaiting trial.

The girl's family sued MySpace and its parent company, News Corporation, alleging fraud and negligence. They claim MySpace markets itself to children but has failed to implement basic safety measures, such as age verification or privacy settings. "It needed to take reasonable measures," Coleman said.

However, Sparks said requiring MySpace to confirm the ages of its more than 100 million users would "of course stop (its) business in its tracks. If anyone had a duty to protect Julie Doe, it was her parents, not MySpace," the judge wrote.

In court papers, lawyers for the girl's family cited eleven cases between December 2005 and June 2006 in which adults faced criminal charges stemming from contact with underage MySpace users.

MySpace has denied any wrongdoing. Although the site uses computer programs to root out underage users who lie about their age to create a profile, MySpace says it warns members that its safety protections are not foolproof.

"We warn parents. We have elaborate advice," Reasoner said, noting that Julie Doe circumvented MySpace's safety features by misrepresenting herself as an eighteen-year-old. Reported in: *San Jose Mercury-News,* March 31.

Franklin Park, Pennsylvania

A western Pennsylvania couple has sued Google, saying pictures of their home on its website violate their privacy and devalued their property.

Images of the home Aaron and Christine Boring bought in the Pittsburgh suburb of Franklin Park in October 2006 appeared on Google's "Street View" feature, which allows

users to find street-level photos by clicking on a map. "A major component of their purchase decision was a desire for privacy," according to their complaint, filed April 2 in state court, which also says the couple suffered mental distress.

The images must have been taken from the couple's long driveway, which is labeled "Private Road," and that violated their privacy, according to the complaint.

To gather photos for Street View, Mountain View, California–based Google sends vehicles with mounted digital cameras up and down the streets of major metropolitan areas taking pictures. Many other companies take real estate photos the same way.

Google spokesman Larry Yu said the site indicates that property owners can get the company to remove images if they cite a good reason and can prove they own the property depicted. "We absolutely respect that people may not be comfortable with some of the imagery on the site," Yu said. "We actually make it pretty easy for people to submit a request to us to remove the imagery."

If the Borings made such a request—especially if they told Google its photos must have been shot from their driveway—Yu said he is confident the image would be removed.

The couple's attorney, Dennis Moskal, said the point is that the Borings' privacy was invaded when the Google vehicle allegedly drove onto their property. Removing the image won't undo that damage, nor will it deter the company from doing the same thing in the future, Moskal said.

"Isn't litigation the only way to change a big business' conduct with the public?" Moskal said. "What happened to their accountability?"

Google is not the only website with a photo of the Borings' property. The Allegheny County real estate website has a photo, plus a detailed description of the home and the couple's names. Similar information, including pictures, of nearly every property in the county is on the website.

Moskal said the county's image appeared to be taken from a public street. "The county's not trespassing," Moskal said. Reported in: *San Jose Mercury-News,* April 4. □

intellectual freedom bibliography

Compiled by Nanette Perez, Program Officer, Office for Intellectual Freedom

Alexander, Jean M. "Book Review: Wiegand, Shirley A. and Wayne A. Wiegand. *Books on Trial: Red Scare in the Heartland*. Normal: Univ. of Oklahoma Pr., 2007. 286p. alk. paper, $24.95 (ISBN 0806138688). LC 2007-4141. *College & Research Libraries.* Vol. 69, no. 2, March 2008, p. 194–96.

Beato, Greg. "I'm With Stupid: The Perennially Embattled Free Speech Zone Over Our Chests." *Reason.* Vol. 39, no. 11, April 2008, p. 20–21.

Bleifuss, Joel. "Editorial: Political Vice Squad." *In These Times.* Vol. 32, no. 5, May 2008, p. 4.

Carr, Nora. "Setting the Record Straight." *American School Board Journal.* Vol. 195, no. 4, April 2008, p. 56–57.

Cavanagh, Sean. "Fla. Evolution Foes Try a Fresh Tactic." *Education Week.* Vol. 27, no. 29, March 26, 2008, p. 15.

Church and State. Vol. 61, no. 4, April 2008.

Darden, Edwin C. "The Words that Wound." *American School Board Journal.* Vol. 195, no. 3, March 2008, p. 42–43.

Kelly, John. "X%$* Box Live: Users of Popular Gaming Technology Are Besieged by Racist Vitriol." *Youth Today.* Vol. 17, no. 3, March 2008, p. 7.

Klein, Alyson. "New Rules on School Privacy Law Proposed: FERPA Regulations Seek to Clarify That Data on Dangers May Be Shared." *Education Week.* Vol. 27, no. 31, April 2, 2008, p. 22.

Navasky, Victor. "Fourteen Little Words" (Review of *Freedom for the Thought We Hate* by Anthony Lewis). *The Nation.* March 10, 2008, p. 42–44.

Oder, Norman. "ALA Draws Crowd to Philadelphia: FBI Whistle-blower, Bibliographic Control, Graduated Dues Among Issues." *Library Journal.* Vol. 133, no. 3, February 15, 2008, p. 16–21.

Privacy Journal. Vol. 34, no. 5, March 2008.

Scales, Pat. "Point of No Return: What Happens When a Family Refuses to Bring Back a Book?" *School Library Journal.* Vol. 53, no. 11, November 2007, p. 31.

Smith, Shannon. "Access to Information: The Bush Administration's Response to the Public's Requests for Information Since the September 11th Attacks." *Colorado Libraries.* Vol. 33, no. 4, 2007, p. 48–56.

Soderlund, Kelly. "Indiana 'Release' for Religious Studies Stands Test of Time." *Education Week.* Vol. 27, no. 31, April 2, 2008, p. 14.

Walsh, Mark. "Justices Decline Appeal Over Student's Online Threat." *Education Week.* Vol. 27, no. 32, April 9, 2008, p. 19.

Walsh, Mark. "Justices Decline District's Appeal in Speech Case." *Education Week.* Vol. 27, no. 25, February 27, 2008, p. 19–20.

Walsh, Mark. "Justices to Weigh Case on Immunity." *Education Week.* Vol. 27, no. 31, April 2, 2008, p. 12.

Walsh, Mark. "Obituary: Activist Backed Court Case on Student Bible Club." *Education Week.* Vol. 27, no. 27, March 12, 2008, p. 5.

Warren, Nicholas. "Teen Film Censorship Considerations and a Diatribe Against Violence." *YA Hotline: The Teen Film Issue.* No. 82, p. 42–43, 45–47.

NEWSLETTER ON INTELLECTUAL FREEDOM
50 East Huron Street • Chicago, Illinois 60611