

newsletter  
on  
intellectual  
freedom



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## most censored stories of 2006–07

Project Censored, a media research group at Sonoma State University that tracks news published in independent journals and newsletters, has published its annual listing of “most censored” stories. Project Censored compiles an annual list of 25 news stories of social significance that have been overlooked, under-reported or self-censored by the country’s major national news media.

Between 700 and 1000 stories are submitted to Project Censored each year from journalists, scholars, librarians, and concerned citizens around the world. With the help of more than 200 Sonoma State University faculty, students, and community members, Project Censored reviews the story submissions for coverage, content, reliability of sources and national significance. The university community selects 25 stories to submit to the Project Censored panel of judges who then rank them in order of importance. Current or previous national judges include: Noam Chomsky, Susan Faludi, George Gerbner, Sut Jhally, Judith F. Krug, Frances Moore Lappe, Norman Solomon, Michael Parenti, Herbert I. Schiller, Barbara Seaman, Erna Smith, Mike Wallace and Howard Zinn. All 25 stories are featured in the yearbook, *Censored: The News That Didn't Make the News*.

The following are the ten “most censored” stories for 2006–07 as reported in *Censored 2008*, published last Fall by Project Censored:

### 1. No Habeas Corpus for “Any Person”

With the approval of Congress and no outcry from corporate media, the Military Commissions Act (MCA) signed by President Bush on October 17, 2006, ushered in military commission law for U.S. citizens and non-citizens alike. While media, including a lead editorial in the *New York Times* have given comfort that American citizens will not be the victims of the measures legalized by this Act—such as military roundups and life-long detention with no rights or constitutional protections—Robert Parry points to text in the MCA that allows for the institution of a military alternative to the constitutional justice system for “any person” regardless of American citizenship. The MCA effectively does away with habeas corpus rights for “any person” arbitrarily deemed

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Views of contributors to the **Newsletter on Intellectual Freedom** are not necessarily those of the editors, the Intellectual Freedom Committee, or the American Library Association.

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## book challenges on rise in Texas

Book challenges appear to be on the rise in Texas public schools after a brief dip, according to the results of a survey conducted by the ACLU of Texas and published as “Free People Read Freely: The Eleventh Annual Report on Banned and Challenged Books in Texas Public Schools.”

For the 2006–07 school year, 67 school districts reported challenges to library books and other teaching materials, which is 5.3% of the 1,256 public school districts in Texas. Forty percent of reported challenges resulted in bans. That figure compares to 25% for 2005–06, 44% in 2004–05, 36% in 2003–04, and 31% in 2000–01.

Sixty-six districts reported challenges for a total of 116 items, compared to 48 districts with 65 challenges in 2005–06, an increase of almost 40% in the number of districts reporting challenges and a significant 78% increase in total reported challenges. Forty percent of book challenges (46 items) resulted in outright bans on the materials. An additional 32% of material was restricted in some fashion (38 items), either by putting the material in the librarian’s office, requiring parental permission, or in the case of curricular material providing an alternative to the assignment.

Exactly one fourth of the challenged materials (29 items) were reinstated without restrictions. Some of the titles reported are series (groups of related books), so the total number of individual books banned or restricted is actually higher than the numbers indicate. For example, one of the banned series (the Alice series) includes over twenty individual titles. The current number and percentage of challenges is more in line with years prior to 2005–06, adding credibility to the idea that the 2005–06 report was a statistical aberration, and not the beginning of a trend.

Houston led the list of challenges, with 11 books. Most districts facing challenges had only one challenge, but 22 districts faced multiple challenges. Most of the districts facing challenges came from the North Central Texas area (19 districts with challenges), though the Houston or South East Texas area was a close second (18 districts with challenges). Nevertheless, South East Texas won the “most challenges” title with a total of 52 challenges compared to 22 in the North Central Texas area.

The data in the report includes information reported by 1124 districts, or 89.42% of all school districts in Texas.

“Every year in Texas, schools fall victim to self-appointed censors who wish to restrict the knowledge available to students. Censorship breeds ignorance,” said Richard Alvarado, Interim Executive Director for the ACLU of Texas. “No school funding plan can improve education in our state when knowledge is withheld.” The full report may be found at <http://www.aclutx.org/files/Banned%20Books%20Report%202007.pdf>. □

## librarians object to abrupt firing of West Virginia archivist

The board of the West Virginia Library Association is considering whether to voice the association’s concern to Gov. Joe Manchin about the abrupt firing November 1 of state archivist Fred Armstrong after 22 years in that post and 30 years at the archives. Although WVLA officials did not plan to issue any statement before their December 4–5 meeting, other librarians and archives patrons across the state were speaking out forcefully about the sudden termination of Armstrong, an at-will employee who was given no reason for his dismissal, which was effective immediately.

“I realize that he’s an at-will employee, but it just seems that overall, in everybody’s perspective that I’ve talked to, he’s done a wonderful job,” Betty Gunnoe of the Martinsburg Public Library said. “If someone’s done a good job for 30 years, it makes you wonder,” Cabell County Public Library Director Judy Rule added. Characterizing the nature of Armstrong’s departure as “appalling and a major catastrophe,” 1997–98 West Virginia Library Association President Judith A. Duncan called for “this travesty [to] be thoroughly investigated and corrected” in a November 15 letter to the *Charleston Gazette*.

Armstrong speculated to the newspaper November 2 that the underlying reason why Culture and History Commissioner Randall Reid-Smith fired him was his opposition to a plan to close the reading room of the state archives and merge it with that of the state library across the Great Hall of the Cultural Center in Charleston to make way for a cafeteria and gift shop, but that, until his termination, “I’ve never discussed that with the media.” He went on to say that the Archives and History Commission has expressed “exasperation . . . about the inability to get any information” about the proposal.

Explaining that government officials “are very careful not to give a reason [for at-will firings] because then they would have to justify that reason,” Rule also cited rumors linking the termination to the plan. “I’m not saying that [the merger] can’t be done,” Rule asserted, “but the archives exist to preserve and the library exists to make use of the materials.” She added that combining the operations would require extensive and careful planning.

“With Fred’s firing, historians and genealogists realize now they better step to the plate and do something,” Mining Your History Foundation board member Kellis Gillespie said, explaining that the local history group was holding an anti-merger rally November 16 outside the Cultural Center. Reported in: *American Libraries Online*, November 16. □

## a call to defend academic freedom

Saying that they are fed up with “aggressive incursion of partisan politics into universities’ hiring and tenure practices,” five prominent academics have issued a call to “defend the university” and gathered dozens of backers in what they view as a new way to bolster academic freedom.

The Ad Hoc Committee to Defend the University issued a statement and is asking professors and others to sign on.

“In recent years, universities across the country have been targeted by outside groups seeking to influence what is taught and who can teach. To achieve their political agendas, these groups have defamed scholars, pressured administrators, and tried to bypass or subvert established procedures of academic governance,” the statement says. “As a consequence, faculty have been denied jobs or tenure, and scholars have been denied public platforms from which to share their viewpoints. This violates an important principle of scholarship, the free exchange of ideas, subjecting them to ideological and political tests. These attacks threaten academic freedom and the core mission of institutions of higher education in a democratic society.”

While the statement identifies the problem as a broad one, it notes that many of the recent incidents have involved the Middle East. “Many of the most vociferous campaigns targeting universities and their faculty have been launched by groups portraying themselves as defenders of Israel. These groups have targeted scholars who have expressed perspectives on Israeli policies and the Israeli-Palestinian conflict with which they disagree. To silence those they consider their political enemies, they have used a range of tactics,” including “unfounded insinuations or allegations” of anti-Semitism or anti-Americanism, the broadening of the definition of anti-Semitism to include “teaching that is critical of U.S. foreign policy in the Middle East and of Israel,” and “pressures on university administrations by threatening to withhold donations if faculty they have targeted are hired or awarded tenure.”

The statement goes on to call for professors to resist such outside pressure. “Academic freedom means not only the right to pursue a variety of interpretations, but the maintenance of standards of truth and acceptability by one’s peers,” the statement says. “It is university faculty, not outside political groups with partisan political agenda, who are best able to judge the quality of their peers’ research and teaching. This is not just a question of academic autonomy, but of the future of a democratic society. This is a time in which we need more thoughtful reflection about the world, not less.”

Signatories to the statement pledge, among other things, to “speak out against those who attack our colleagues and our universities in order to achieve their political goals” and to “urge university administrators and trustees to defend academic freedom and the norms of academic life, even if

it means incurring the displeasure of non-scholarly groups, the media among them.”

The organizers of the effort are Joan W. Scott, a professor of social science at the Institute for Advanced Study, in Princeton, N.J., and former chair of the American Association of University Professors’ Committee A on Academic Freedom; Jeremy Adelman, chair of history at Princeton University; Steve Caton, director of the Center for Middle Eastern Studies at Harvard University; Edmund Burke, III, director of the Center for World History at the University of California at Santa Cruz; and Jonathan R. Cole, provost emeritus of Columbia University.

The new effort comes at a time when many groups are trying to find ways to bolster academic freedom. The American Association of University Professors issued a new statement in September to counter certain arguments used against professors (such as arguments that their classes must all be balanced). The American Federation of Teachers is also working on a new statement on academic freedom.

Scott, of the Institute for Advanced Study, said that the statement came about because “a number of us were just fed up with the amount of pressure that groups which claim to be defending Israel are exerting.” Scott said “outside political groups are trying to force the hand of university administrators in ways we think are really dangerous.”

Scholars in these cases deserve tough scrutiny, Scott said, but it should come from scholars in their disciplines—their departments and the outside experts recruited by their departments for evaluations—not from the public or people in other fields. She said that critics of these professors imply unfairly that their work is never reviewed, when their books would never have been published without thorough peer review and they never would have been hired without intense questioning about their scholarship and teaching.

“It is the prerogative and responsibility of the members of the discipline to make these judgments,” she said. “It’s not as if people get a free pass. It’s that at every stage, the review has to be within the discipline.”

As a general rule, she said, “biologists shouldn’t tell historians how to interpret Middle Eastern history and historians shouldn’t tell biologists what good biology is.”

Adelman, the history chair at Princeton, said he joined the effort out of concern over “the proliferation of cases.” He said it was inevitable that from time to time, a scholar might draw lots of outside attention, but the apparent increase in such cases made him think it was time for professors to take a more public stand.

Outside groups have every right to analyze and criticize scholars, he said, but not to try to dictate tenure decisions. “I have no problem with debate. But the critics of the university’s right to make decisions about scholarship don’t understand that’s what we are doing.” Scholars need to be evaluated on the basis of their scholarship, he said, not their views on the Middle East.

While the professors’ statement on academic freedom



did not mention groups by name, Campus Watch—which publishes information about professors of Middle Eastern studies, with much of the analysis critical—would appear to be one of the groups.

Winfield Myers, director of Campus Watch, said that the new group was based on false assumptions. The professors believe, he wrote via e-mail, that “academics, uniquely among all professionals, are beyond criticism—that they make up a sacrosanct, privileged group that demands protection from opinions with which they disagree. By implying that criticism from external sources, such as Campus Watch, is illegitimate, they seek to seal themselves off from the society that supports them.” He said that he found irony that “ivory tower intellectuals who regularly render harsh judgments against the practitioners of other professions, from businessmen to clergy, and from politicians to the members of the military—claim immunity from criticism when it is directed toward themselves.”

Myers went on to say of the professors’ effort: “Their desire to declare themselves off-limits to external criticism is symptomatic of the intellectual homogeneity that plagues academe. Were it not for extra-university voices, there would be precious little debate within academic Middle East studies, so uniform is opinion among professors of that field.”

Concerns over academic freedom also loomed large over the scholarly presentations at the annual meeting in Montreal in November of the Middle East Studies Association, a group whose members sometimes confess to feeling as besieged as they do blessed by the contemporary preoccupation with their region of study.

The association’s Committee on Academic Freedom reported that it was busier than ever this year sending letters of intervention in cases where it sees the freedom of scholars—either in the region or studying the region—as threatened.

“There’s been an explosion of cases lately,” said Gershon Shafir, a professor of sociology at the University of California at San Diego and a member of the academic-freedom committee.

Laurie Brand, the committee’s chairwoman and a professor of international relations at the University of Southern California, said the group had sent out 22 letters of intervention over the past ten months. The prime trouble spots: Turkey, Iran, Iraq, the West Bank and the Gaza Strip, and the United States.

In a panel presentation on the first day of the meeting, the committee summed up its work over the year. The discussion panned from concerns over the American reception of John J. Mearsheimer and Stephen M. Walt’s book,

*The Israel Lobby and U.S. Foreign Policy*, to descriptions of speech crackdowns in Turkey and blasphemy lawsuits against professors in Kuwait.

When MESA, as the association is known, decided to hold this year’s meeting in Canada, it was in part just because the group had not met north of the border since the late 1980s, said Amy W. Newhall, executive director of the association and an assistant professor of Near Eastern studies at the University of Arizona. But another consideration bolstered the choice as well: lingering feelings that travel to the United States is problematic for Middle Eastern scholars, even six years after the terrorist attacks of September 2001.

“There was a certain sentiment within the board, given the difficulties of the visa situation after 9/11, that perhaps a Canadian venue would be less restrictive,” Newhall said. Whether or not the switch to Canadian ground actually made for easier travel, Newhall said, the move appears to have generated a windfall of participation.

“We had more submissions for this meeting than we’ve ever had before,” said Newhall. “And the largest expansion is from our European members.” Newhall’s tentative conclusion: For some international members of the 2,700-strong association, the impression of U.S. inhospitality toward Middle Eastern scholars has not gone away.

This year’s meeting also came on the heels of an announcement from Bernard Lewis and Fouad Ajami, two prominent scholars of the region who are closely associated with the Bush administration’s Middle East policy, that they have founded a new group called the Association for the Study of the Middle East and Africa. The new group has scheduled its own conference for April 2008 with the theme, “The Evolution of Islamic Politics in the Middle East and Africa: From Traditional Limits to Modern Extremes.”

Lewis is a professor emeritus of Near Eastern studies at Princeton University, and Ajami is a professor and director of Middle East studies at the Johns Hopkins University.

In a written statement, Lewis, the new group’s chairman, said he was founding it because study of the region had become too “politicized”—a comment understood by many as a reference to MESA. MESA is often accused of being predominantly critical of American and Israeli policies in the region.

But Newhall said that contemporary politics have little to do with the work of scholars who study Persian poetry, say, or the late Ottoman Empire—academic interests that are fairly typical of the association’s membership. “MESA hasn’t a brain,” she said. “It’s 2,700 brains.” Reported in: [insidehighered.com](http://insidehighered.com), October 23; *Chronicle of Higher Education* online, November 19. □

## Yahoo! settles with Chinese journalists

Yahoo! settled a lawsuit November 13 with two Chinese journalists who had been jailed after the company provided the Chinese authorities with information about their online activities. Terms of the deal were not disclosed.

The two journalists and a relative sued the company this year after Yahoo! HK, a subsidiary based in Hong Kong, gave the Chinese authorities e-mail messages containing pro-democracy literature. The jailed journalists alleged in the lawsuit that jailers had tortured them and that Yahoo! was responsible.

The company has denied any responsibility and maintained it had been complying with Chinese law when it turned over the e-mail.

The case has raised questions about whether Internet companies should cooperate with governments that deny freedom of speech and frequently crack down on journalists. It also has been the subject of Congressional hearings, in which lawmakers accused the company of collaborating with an oppressive communist regime.

Neither side disclosed terms of the settlement other than to agree that Yahoo! would pay the lawyers' fees of the two journalists—Shi Tao and Wang Xiaoning—and the relative who sued. Yahoo's chief executive, Jerry Yang, and its general counsel, Michael J. Callahan, offered apologies to Mr. Shi's mother at a Congressional hearing the previous week. Reported in: *New York Times*, November 14. □

## crackdowns on bloggers on the rise

Government repression in some countries has shifted from journalists to bloggers, with the vitality of the Internet triggering a more focused crackdown as blogs increasingly take the place of mainstream news media, according to Lucie Morillon, Washington director of the advocacy group Reporters Without Borders.

"Countries that were not sentencing journalists to prison terms anymore have been doing it these last months for bloggers. This is the case in Egypt and Jordan," she said October 16 as the group released its sixth annual Worldwide Press Freedom Index. Egypt ranked 146th and Jordan 122nd in press freedom among the 169 countries for which data were available.

Reporters Without Borders said major industrialized countries, including the United States, made slight progress, moving up several notches, with the exception of Russia. Iceland topped the list for press freedom in the survey, and Eritrea ranked last.

While not all press freedom violations were known in the countries ranked second and third from the bottom—

North Korea and Turkmenistan—"Eritrea deserves to be at the bottom," the group said. Eritrean President Isaias Afwerki has banished privately owned press outlets and jailed the few journalists who have dared criticize the government, it said. "We know that four of them have died in detention and we have every reason to fear that others will suffer the same fate," the group added.

Most democracies improved their ranking, with the United States moving up to 48th place from last year's 53rd, Morillon said.

The reason the United States did not make the top 30 is because videographer and blogger Josh Wolf spent almost eight months in jail for not turning over video footage of a demonstration in San Francisco and because the confidentiality of sources is under continued attack, she said. Cameraman Sami al-Hajj, from al-Jazeera satellite television, is still being held without charges at the U.S. detention facility at Guantanamo Bay, Cuba, and journalist Chauncey Bailey was killed in Oakland, California, after his coverage made him a target, she added.

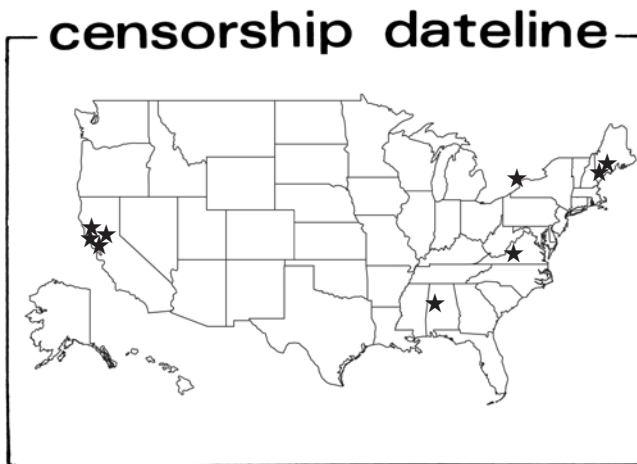
Outside Europe, no region has been spared censorship or violence toward journalists. "We are particularly disturbed by the situation in Burma," Reporters Without Borders said. "The military junta's crackdown on demonstrations bodes ill for the future of basic freedoms. . . . Journalists continue to work under the yoke of harsh censorship from which nothing escapes, not even small ads."

China was at the low end of the index, in 163rd place. "With less than a year to go to the 2008 Olympics, the reforms and the releases of imprisoned journalists so often promised by the authorities seem to be a vain hope," the group said.

Concerning Uzbekistan (160th), Reporters Without Borders said it feared a wave of repression would target the handful of independent journalists left in the run-up to the presidential election in December.

In the Palestinian territories (158th), the threat has changed, according to Morillon. "Two years ago, it was coming from the Israeli forces shooting at Palestinian reporters. These days, the main threat comes from internal conflicts and the rivalry between Fatah and Hamas," she added. Reported in: *Washington Post*, October 17. □

**SUPPORT  
THE FREEDOM  
TO READ**



## libraries

### Tuscaloosa, Alabama

If every book were to be taken off the shelves because someone considered it offensive, libraries would be empty, Joyce Stallworth, professor of English Education at the University of Alabama warned the Tuscaloosa County Board of Education November 26. “Romeo and Juliet” could be considered as promoting teen suicide. *The Scarlet Letter* could be a “how-to” for adultery. *The Adventures of Huckleberry Finn* and *To Kill a Mockingbird* could be banished for their repeated use of racial slurs.

“Are we prepared in Tuscaloosa in 2007 to sanction a process that could potentially leave our library shelves empty?” Stallworth questioned.

The Tuscaloosa County Board of Education was scheduled to make a decision that evening on whether the book *Sandpiper*, by Ellen Wittlinger, would be returned to library shelves at Brookwood High School. But after hearing opinions pro and con for the book, the board decided to table the decision until the board’s next meeting.

In September, Brookwood tenth-grader Lysa Harding and her grandmother Pam Pennington refused to return the book, saying that its graphic descriptions of oral sex made it inappropriate for a school library.

The novel tells the story of a 15-year-old girl named Sandpiper Hollow Ragsdale, who is on a “sexual power trip and engages in random hook-ups” for oral sex, according to a review by the *School Library Journal*. The novel takes a bold stance on sexual relationships and carries the

overall theme that oral sex is the same as conventional sex and has consequences.

Pennington later filed a formal complaint about the book and discussed her concerns with a formal school committee appointed to consider the controversy.

After reading the book, the committee decided that it should be put back on the library’s shelves because of its overall theme and valuable lesson, principal Laura McBride said in a letter. Pennington appealed the committee’s decision and spoke to the board.

“Why should our kids have to walk into a school’s library and pick up a book like this with the words and the graphic [description] that is inside of it?” Pennington asked. “I’m not saying the book is a bad novel, it’s a good novel; but it should not be on our school shelves. “It has to do with morals for our kids.”

During the meeting, board president Brett Whitehead said he had read the book, but still wanted more information, including whether any other school boards in other parts of the country had dealt with similar complaints over *Sandpiper*.

According to the American Library Association, this was the first time the book has been challenged, said Jane Smith, coordinator of library media services for Tuscaloosa County Schools. Wittlinger, the book’s author, said in a letter to the school system that she was very surprised to learn that her book was being called “offensive” and “sick” because she said the purpose of the book is not meant to be a how-to guide for oral sex. Instead, it is a cautionary tale to teach kids that oral sex is “real” sex and not just the “cool thing to do.”

“I know that there are people in this country, who, in the name of religion, feel high school students should be kept as ignorant of sex as possible, but I was shocked that the girl herself was equally afraid of knowledge,” Wittlinger said. “Of course, the bottom line, as always, is that Lysa Harding didn’t have to read the book if she didn’t want to. But there are no doubt other students who do want to read it and she should not be able to decide what anyone else can or cannot read.”

Stallworth said the book’s overall theme is an important one, and gave the board a 2005 youth risk behavior study by the national Centers for Disease Control, which showed that 50.6 percent of Alabama teens surveyed were not virgins - higher than the national average of 46.8 percent.

Of the Alabama teens who had had sex, 38 percent had sex with one or more people within the last three months, also higher than the national average of 33.9 percent, according to the CDC study. During the meeting, Whitehead asked Smith to find out if there were any other books that portrayed the same message as *Sandpiper*, but with less graphic descriptions. Reported in: [datelinealabama.com](http://datelinealabama.com), November 27.

## Concord, California

Appalled by descriptions of adolescent pill-popping, suicide and lethal injections given to babies and the elderly, two parents are demanding that the Mt. Diablo school board eliminate a controversial but award-winning book from school reading lists and libraries.

*The Giver*, by Lois Lowry, depicts an efficient and war-free society that exists at the price of strict rules. Each couple is allowed two children, one male and one female. All citizens must take medication to quell sexual desire. Only one twin baby will be allowed to develop into a child; the elderly succumb to a deadly needle before natural death.

“Infanticide and killing old people off are really touchy issues, even for adults,” said Mary Ellen Woods, parent of a student at Sequoia Middle School in Pleasant Hill. “I think parents would take issue with their kids being sold on these ideas without their supervision.”

Educators say teaching the novel in middle school offers a compelling way to talk about democracy and ethics with adolescents just finding their way in the world, like the story’s protagonist, Jonas.

“There’s a lot of strength and power in discussing what is my role in society, questioning what makes a good society,” said Johanna Rauhala, a seventh-grade teacher at Valley View Middle School in Pleasant Hill. “Public school is a powerful forum to discuss that.”

With its vivid language and grave themes, “*The Giver*” has drawn both objections and praise since its publication in 1993. The novel won a Newbery Medal for best children’s literature and ranks No. 14 on the American Library Association’s list of 100 Most Frequently Challenged Books from 1990 to 2000.

The Mt. Diablo District, headquartered in Concord, added *The Giver* to its optional sixth-grade reading list in 2004 upon recommendation of a committee that included Rauhala. The book is widely available in elementary school libraries and taught in middle school classrooms.

But Woods and parent Alany Helmantoler say the book is too dark and advanced for preteens. The two complained at a board meeting last month and said they plan to file forms to remove the novel from the approved list.

“I don’t want my child reading something that graphic,” Helmantoler said. The complaints could go to a panel made up of a school board member, assistant superintendent, three parents, three teachers and a curriculum specialist. The group would make a recommendation to the school board, which would decide whether to wipe the book off the list.

Ironically, *The Giver* deals with freedom of choice. In it, citizens apply for spouses and children. And, in Orwellian fashion, “elders” assign each person a function to keep their utopia running smoothly. The sensitive Jonas, 12, is being groomed as the next “receiver,” one who alone holds all the memories of the past and understands what it is like to feel

joy and pain. In the end, armed with the knowledge of what life can be like, he decides to flee to a place where he will be allowed to read, feel and love freely.

The coming-of-age tale perfectly broaches topics that many young adolescents are beginning to ponder, Rauhala said. “It deals with questions of identity and a person’s function in society, which is what many of these students are coping with now,” she said.

Helmantoler said the descriptions were too graphic for her daughter, now reading the book for class in sixth grade at Sequoia. “My issue is that particular part where they kill a baby,” she said. “They are constantly talking about killing people.” Reported in: *San Jose Mercury-News*, November 6.

## Sacramento, California

A contingent of conservative library board members is pushing the Sacramento Public Library to adopt a new policy aimed at ensuring library computer users do not access pornographic images. Arguing that the need to protect children outweighs any concerns over the constitutionality of a more restrictive policy, some board members say library users should not be allowed to bypass an Internet filtering system.

Filters installed on library computers already keep patrons from visiting a list of Web sites that could be considered offensive. But the current policy allows librarians to give unfiltered access to patrons who ask for it.

The long-simmering issue over how much access patrons should have—whether they should be able to use the Internet filter-free—will likely come before the board in early 2008.

While many libraries in the region boot patrons for viewing objectionable material, none of them except Sacramento actively blocks users from pre-determined Web sites.

Roberta MacGlashan, a Sacramento County supervisor and member of the library board, likened allowing unfiltered Internet access to stocking library shelves with dirty magazines. “We are not required to have those (pornographic) materials in our library collection,” said MacGlashan. “So I don’t see any difference in filtering those sites out—and keeping the library family-friendly.”

The off-and-on debate in Sacramento about the library Internet policy is part of a nationwide discussion over how libraries deal with the ever-expanding worldwide Web. “Everybody in the country is grappling with freedom versus security,” said Paul Miller, director of the Woodland Public Library.

Across the nation, library Internet policies vary. Some offer unfiltered access in adult-use areas, some allow unfiltered access upon request, and others have chosen to provide only filtered access, said Deborah Caldwell Stone, deputy director of the American Library Association’s Office for Intellectual Freedom.



Since 2001, filtering has been the default setting on Sacramento library computers. Over the years, the board has taken steps to minimize library disturbances, such as installing privacy screens and recessed tables, and requiring all computer users to furnish their names. Library Director Anne Marie Gold said the goal is to balance people's right to information with the need to protect patrons. She said complaints about Internet content are "extremely rare."

Less than 1 percent of users request unfiltered Internet access, according to library records. But those unfiltered sessions have sparked a spattering of complaints from other patrons. From January through September, six of the 543 incident reports filed with library officials were Internet-content related. The incidents included a young man viewing suggestive rap videos, a teen printing pictures of naked cartoon characters, and a man reportedly masturbating while watching pornographic videos.

The most recent incident occurred July 25 when a 40-year-old Carmichael Library patron complained about a 9-year-old girl viewing "inappropriate material on Myspace.com"—a social networking site that is not blocked.

A previous call for the library board to filter all Internet sessions at Sacramento public libraries failed on a 5-4 vote. But since then, the board has been expanded to 14 members—with new members from the Elk Grove, Citrus Heights, Rancho Cordova and Isleton city councils joining elected officials from the city and county of Sacramento.

When library staff updated the newly expanded board on the Internet policy, discussion turned to debate. Darlene Ward, who lives in Rancho Cordova and whose husband works at the Central Library, says she won't take their children to the library because of all the "creepy" people her husband has told her about.

"They still allow anything to come across the computers," said Ward. As a "society of laws," she added, we shouldn't allow pornography in libraries. Her husband, Gerald Ward, said recent changes to the library policy aimed at maintaining a "safe, welcoming and comfortable environment for the public" give him and others the power to intervene when a patron's Internet use is considered offensive.

Some librarians have asked patrons to leave; others have moved Internet users to locations where they're less likely to offend others. In a few cases, they've called police. But some board members, including Supervisor Susan Peters, worried about asking staff to intervene. Keeping filters on computers at all times "is one way to avoid policing," Peters said.

Sheriff John McGinness said dealing with someone viewing pornography can quickly turn dicey. "I have serious concerns about having libraries charged with the responsibility of telling people their conduct is inappropriate," McGinness said. "I want to do everything I can to make sure that (libraries) don't become a big magnet for people that would otherwise be in adult bookstores," he said.

A 2003 U.S. Supreme Court decision upholding the federal government's right to withhold money from public libraries that do not use filtering devices failed to clarify whether limiting Internet access violates patrons' rights. Attorney Robin Leslie Stewart, in an advice letter to the Sacramento library, said six justices had said their ruling was affected by the fact that Internet-blocking software could be promptly disabled when adult patrons asked.

"We think that an Internet use policy flatly prohibiting all adult access to constitutionally protected materials would raise significant First Amendment questions, the answers to which cannot be predicted with certainty," Stewart said. Reported in: *Sacramento Bee*, November 4.

### **San Jose, California**

A Christian group led in part by a former San Jose city councilman is pushing for anti-pornography filters on computers at the city's public libraries.

Computers with Internet access at the city's 18 public libraries are divided into areas for adults, teens and children, but there are no Internet filters installed. Library officials say they do not want to block information, and the policy is in line with a 1997 city council decision. The city council can change library policies, but the matter has not yet been placed on its agenda.

Larry Pegram, president and co-founder of the San Jose-based Values Advocacy Council, said the libraries' lack of filters recently came to the attention of the group. "The city council has the right and the duty to control content on the computers in the public libraries," Pegram said.

The former city councilman said the group is working on the filters with Arizona-based Alliance Defense Fund, a 13-year-old organization that includes more than 35 ministries nationally and has been involved in legal battles for religious liberties.

The office of Councilwoman Nancy Pyle has indicated that the measure would help protect children from Internet pornography. Councilman Pete Constant also has expressed interest in the idea.

Ned Himmel, the assistant director of San Jose's public libraries, said he had not seen the Values Advocacy Council's proposal, but he and other library leaders are wary of compromising access to information. Older filters, such as the ones considered ten years ago, inadvertently blocked legitimate Web sites.

"For us, they are not as effective as they should be—they filter out more than they should," Himmel said.

At San Jose's public libraries, computer users must have a library card to log in with their library number. Users must click on a statement agreeing to the library's use policy before each session, and patrons younger than 18 are supposed to have a parent nearby to help them find appropriate information.

In the few instances where patrons have looked at risqué material when children have been present, library staff members have talked to the user and made them aware of it, said branch manager Pam Crider. She said the current policy does not direct librarians to monitor patrons' Internet use.

"We want to provide free access to information. Parents are certainly welcome to guide children's use, but it's certainly not the library's role to do that," Crider said.

The Almaden branch's computers often are more crowded on weekdays after school is dismissed, but there are usually enough computers for everyone. The library also has wireless Internet access, which is subject to the same rules.

The computer-use policy states that the library cannot restrict access to materials found on the Internet nor protect users from materials or information they may find offensive. "The library encourages all users to make appropriate use of the Internet by providing programs and assistance for responsible use," the policy states.

San Jose library workers have developed two gateway sites for children and teens, KidsPlace and TeenWeb, which provide links to age-appropriate pages.

Library administrators said the Martin Luther King, Jr., Library downtown might present a more complicated situation because it is shared with the students and faculty of San Jose State University. Himmel said filters likely will not jibe with the university's needs.

The King library offers privacy screens for computer users who know they will be looking at questionable material. They can be checked out for up to two hours with a library card.

Other library systems also have taken on the question of Internet filters, and a related case reached the U.S. Supreme Court in 2003. In *United States vs. American Library Association*, librarians challenged the federal Children's Internet Protection Act of 2000, which required libraries to install filtering software to qualify for federal money. By a 6-3 decision, the court said libraries can place filters on web-connected computers.

The law does not violate the First Amendment, the justices ruled, because librarians can unblock Web sites.

Pegram said the court's decision strengthens his group's proposal. "Communities have the right to control content," he said. Reported in: *San Jose Mercury-News*, October 19.

### **Sebastopol, California**

A Sebastopol library consultant hired to improve literacy in the Bellevue Union School District said he was fired after administrators threatened to ban a science fiction book. School officials said they were unsatisfied with Richie Partington and terminated his contract after he refused to discuss whether Rodman Philbrick's *The Last Book in the Universe* was appropriate for elementary school

students.

Partington, 52, reviews children's books on his Web site and is preparing to teach an online library course for San Jose State University. He recently was named to the selection committee for the 2009 Caldecott Medal, a prestigious children's literature award. He was hired in October by the Bellevue district in southwest Santa Rosa to help develop the library collection and consult on policies to promote lifelong learning.

As part of his duties, Partington regularly read to students in the district's four elementary schools. One of the books he read was *The Last Book in the Universe*. Published by Scholastic in 2000, it is a dark tale of an epileptic boy living on the edges of a post-apocalyptic society. Navigating a violent world and enduring his seizures alone, the boy deals with gang leaders who threaten to "cut his red" or "blow you into particles" with their splat guns as he journeys from his criminal life to reconnect with a leukemia-stricken sister.

Partington's firing drew protests after he detailed his story on his Internet page, catching the attention of librarians and authors including Jane Yolen, who wrote Caldecott Medal-winning *Owl Moon* and other children's stories.

"He's a national treasure, and those of us outside the district and district politics are agog at what has happened," Yolen said in an e-mail.

School officials said Partington's dismissal has been misrepresented as a case of censorship. "There is no banned book," Kawana School Principal Jesse Escobedo said. Escobedo said he asked, via a library clerk, to speak with Partington on November 19 about the appropriateness of *The Last Book in the Universe* for elementary school students after Partington read the first chapter to two sixth-grade classes.

Partington refused to meet, demanding that Escobedo read the text prior to any discussion. Escobedo said he read excerpts of the book online, questioned some of the themes and described Partington's stance as unreasonable. "All I wanted to do was talk to him," he said. "The librarian mentioned it to him and told him I wanted to talk to him first, and he left kind of angry."

Partington acknowledged that he left without speaking with Escobedo. "I politely but firmly made it clear to the District Superintendent that until the principal actually read the book he had banned, I didn't see how we could have a conversation about the book."

Partington said he had twice read the first chapter of the book aloud to sixth grade classes at the Kawana School the previous week and "had more than a dozen students begging to read it." When Partington arrived at the school on the following Monday morning with four copies of the book, however, he said he was informed by the school's library clerk that she didn't want the book in the library because it has to do with gangs and that she'd gotten the principal to forbid its addition to the collection.

Noting in his email to the Superintendent that “the bigger issue here is one of arbitrariness due to a lack of a District collection development policy and District reconsideration policy,” Partington immediately drafted and e-mailed a proposal for a reconsideration policy to the Superintendent who responded the same day by mailing out the termination letter.

“It seemed to me that they clearly felt that they had the right to make decisions on what books would be in the library, whether or not they had read them,” Partington said.

His 35-week, \$21,000 contract was terminated in a letter dated November 20. The letter, signed by Roehrick, arrived at Partington’s Sebastopol home November 21. The district said it will pay him through December 14 for a total of \$7,200 for 12 weeks’ work.

“It’s not about banning a book,” Roehrick said. “(His termination) was the culmination of a perception on my part of what we asked for and were getting, were not fitting.”

*The Last Book in the Universe* isn’t available at any Bellevue Union district school. Partington said he had hoped to add it to Kawana’s collection after reading it to the sixth-graders.

Scholastic, the publisher, lists among the book’s themes technology, changes and new experiences, friends and friendship, reading and siblings. The recommended age is 12–18 and grades seven through 12.

If it were in an elementary school library, Escobedo said, “the book would be available to everybody. I just thought it was inappropriate for our level. For middle school it might be great.”

That argument makes little sense, according to Deborah Caldwell-Stone, deputy director of the Office of Intellectual Freedom of the American Library Association. “Essentially you are saying that a sixth-grader can’t read anything that is inappropriate for a first-grader,” she said. “There are other ways of addressing that issue. . . . That is more a matter of managing the library and guiding students to books that are appropriate to their age and development.”

Elizabeth Sesma-Olinyk, principal at Taylor Mountain School in the Bellevue District, said her librarian raised some concerns about Partington over “minor procedural” things during his six-week tenure. Sesma-Olinyk said Partington’s call for a district policy on how administrators should deal with complaints became moot when he refused to discuss the book with Escobedo.

“If Mr. Partington is talking about engagement about what is appropriate—let’s not pick up our bag and walk off,” she said. “How can you say let’s have a policy and let’s have a conversation when the person who is claiming that needs to happen (walks away)?” Reported in: *Santa Rosa Press-Democrat*, November 28.

## **Kennebunk, Maine**

The Kennebunk Free Library removed images of President George Bush and Vice President Dick Cheney November 6 from an exhibit of collages made from old American flags. Library Director Janet Cate said the works did not meet “normative community standards” because of the Bush family’s connection with the area, and noted that they had been the subject of complaints from the public.

“This is Mr. Bush’s hometown,” Cate said, referring to the Bush summer home on Walker’s Point in Kennebunkport. “It is very local, and that’s the community part of the normative community standards.”

It was the second time in a week that controversy had arisen over G. Bud Swenson’s exhibit, which includes 22 collages made from old American flags that Swenson purchased at flea markets.

A week earlier, Cate told Swenson that the exhibit could not go up, only to reverse her decision after Swenson met a day later with members of the library’s board of trustees. The exhibit was titled “Portraits in a Time of War.”

But Board President Kate Manahan said that a member of the public had filed a formal appeal with the board, contesting Cate’s decision to let the exhibit go forward. Manahan said the board would take up that appeal as soon as possible. She said the board has final authority over the exhibit, but it was unclear what course of action it would take.

Swenson refused to take down the images of Bush and Cheney himself, suggesting instead that Cate turn them to face the wall. But Cate removed them and returned them to Swenson.

Swenson described the images of Bush and Cheney as untitled portraits, made with pieces of old flags that had been taken apart and reconstructed. “They’re really quite pleasing, but Bush looks a little perplexed,” Swenson said of the works. “Cheney’s got kind of a smile, a grin.”

Swenson said he urged Cate not to take down the paintings, “because then we’re back to the censorship issue,” a concern he raised when he was initially told that the exhibit could not be hung.

Although the dispute over the exhibit has political overtones, Manahan said an initial complaint raised concerns about whether Swenson’s works are appropriate for viewing by children. She said trustees addressed that issue when they met with Swenson.

“Bud (Swenson) went to great lengths to explain it would not be something that children couldn’t view,” she said. Manahan said the board discussed specific works with Swenson, and he did not mention that the exhibit would include the Bush and Cheney pieces. “We were under the impression that the portraits were all like the ones we had seen, and not of specific individuals,” she said.

Manahan would not say whether she felt Swenson’s work does not meet community standards. “I believe in his right to express himself,” she said. “He has a right

to do what he's doing." Manahan said the library has a mission of serving the diverse educational, cultural and recreational needs of the Kennebunks. "But it's also our job to find the normative standards and to not exceed and offend," she said.

She suggested that the medium of the American flag, a key component in the controversial exhibit, is emblematic of the kind of open, democratic dialogue the library hopes to foster. "I would encourage people to see the show if they're going to discuss it, to be willing to listen, and finally to be willing to share what they think in a respectful way," she said.

On November 16, the library held a public forum on the collages. Moderated by local lawyer Durwood Parkinson, the evening started with comments from three panelists—Nelson Eubanks from the Maine Library Association's Intellectual Freedom Division, Portland lawyer Ron Schneider, and local Vietnam veteran Kenneth Kingsley.

Kingsley described himself as a proud veteran and a proud resident of Kennebunk who's "a little bit embarrassed right now" and went on to discuss the provisions in the state flag code that suggest a flag, when no longer able to be in service, should be destroyed in a "dignified" manner. He also questioned why Swenson's display had to be up during Veterans Day.

"We have a cemetery next door with Civil War veterans and we're proud to place markers there," Kingsley said. "We have Memorial Field at the high school . . . in the park across the street, the flag flies freely in the wind above it. Last week was Veterans Day and flags were flying all over town. And what did we have in the library? Cut-up flags."

Kingsley ended his comments by asking Swenson to voluntarily remove his display.

Schneider offered a different perspective on the show. First pointing out that contrary to popular belief the library is a private institution and not a public one, even if it receives public funding, as such it could not violate the First Amendment.

"There is a difference between what is appropriate and what is legal," he continued, pointing out that the Supreme Court has found the flag code to be unconstitutional more than once.

He showed examples of art where the flag had been used with nary a whisper of complaint, suggesting that while most flag art goes against the flag code, it's only those pieces some people find troubling that get called on it. "The Supreme Court said the government may not prohibit an idea simply because people find it disagreeable," he added.

Nor should a library, said Eubanks. Pointing out that the Kennebunk Free Library has a policy on its art displays based on the American Library Association's guidelines, he said a "library should not remove an exhibit due to complaints."

He further pointed out that KFL's term that artwork should be "acceptable to normative community standards," was "extremely vague" and left the library's policy open to legal review.

When the audience was able to speak, its members offered different perspectives. Vietnam veteran Ted Hessleton said he was respectfully disagreeing with Kingsley. "Not all veterans feel alike about this issue," he said. "This summer I walked in a protest led by Iraqi War veterans."

So did Jim Simonds of Kennebunk, who described himself as "against this war and against this president." Still, he said, people should show reverence for the flag. "Most people believe the flag stands for something, like God stands for something," Simonds said. "You can wear a white sheet, read a banned book—go there, it's your right. But the library shouldn't have cut up flags."

Even if it does, it was a decision that wasn't easy to make, said board of trustees member Michael Brigham, who pointed out that the federal government and U.S. Supreme Court have left the library in this position by having a federal law that cannot be enforced.

"I don't think the KFL should have to fill this federal rule-setting void," he said. Brigham also said that he voted to let the exhibit stand. "I did not vote that way because I appreciate what the artist did to the American flag," he said. ". . . I voted to minimize liability. I voted to try to find a path of least distraction for the KFL."

"The intellectual debate about First Amendment rights, censorship and freedom of speech or expression may be interesting to some," he said. "I would prefer to spend my time trying to rebuild bridges with people that feel betrayed by our decision."

One of those people might have been artist and gallery owner Tina Ambrose, who spoke out against Swenson's use of flags in his art. "It bothered me greatly," she said, adding that the works might have been better displayed in a private gallery. "I try not to destroy something before I create it."

But others said that Swenson's greatest creation might not have been his collages, but the healthy debate they provoked. Vietnam veteran John Zwieger said when he first saw Swenson's work, he didn't even realize that it was made from American flags. And maybe that's the whole point. "They do what artists do," he said. "They get us to think in different ways about our national system. I'm more offended by driving by a used car dealer and seeing the flag exploited to sell cars."

Zwieger also said that he remembers, as a soldier, raising his hand and pledging to uphold the Constitution of the United States. "We have to remember what it stands for," he said.

Swenson took in the debate from his seat in the front row and at the end of the night declared the debate to be "wonderful," a sentiment shared by board of trustees president Kate Manahan. "We were very fortunate to have



so many people come,” she said. “The people were very eloquently spoken.” Reported in: *Portland Press-Herald*, November 7; seacostonline.com, November 22.

### **Lewiston, Maine**

A Lewiston woman who lodged a formal complaint with police, claiming a children’s sex education book at the public library is obscene and should be taken off the shelves has been ordered to appear in court to answer to a civil charge of failing to return a library book. JoAn Karkos said *It’s Perfectly Normal*, a sex education book, violates the city’s obscenity ordinance, and she wants police to issue a citation against the Lewiston Public Library.

Several weeks earlier, Karkos checked the book out of the library and refused to return it, saying the book was inappropriate. The library eventually had police issue a summons for the return of the book. Karkos was set to appear before a judge in December on that issue. In the meantime, police are investigating her complaint.

Library Director Rick Speer said he is not pleased with Karkos’ latest move. Reported in: WMTW.com, October 31, November 20.

### **Halton, Ontario**

The Centre for Inquiry and the Canadian Secular Alliance are calling an Ontario school board’s decision to remove a children’s book from its library shelves, “an overt example of the discrimination against atheists by the religious.”

The Halton Catholic District School Board ordered *The Golden Compass* removed from library shelves at dozens of schools after receiving a request for review from a member of the community. The book, by popular British author Philip Pullman, has won numerous awards, including the Maine Student Book Award and the American Library Association’s Best Books for Young Adults award.

Justin Trottier, executive director of the Centre for Inquiry Ontario, urged the books be returned to shelves “so that libraries may continue to be places of learning and imagination.”

“Some of our greatest authors, philosophers and scientists have been atheists. If books written by atheists are banned for not conforming to Catholic worldviews, will the school board proceed to ban books deemed pro-Muslim, pro-Buddhist, or even pro-Protestant if they are critical of Catholicism?” Trottier asked. “Pretty soon the only book in their library may be the Bible.”

The board—which oversees some 43 elementary and secondary schools in Ontario—pulled the book and two other Pullman titles from the “Dark Materials” trilogy from public display for review. The books are available to students upon request.

“(The complaint) came out of interviews that Philip Pullman had done, where he stated that he is an atheist and

that he supports that,” said Scott Millard, the board’s manager of library services.

“Since we are an educational institution, we want to be able to evaluate the material; we want to make sure we have the best material for students.”

Millard said the review has been board policy since 1990 and that “any community member has the right to request a re-examination of learning or library material. We are an integral part of the community and people have the right to ask us about the resources we have,” Millard said.

The Halton board set up a 12-member committee to review the book and recommend whether it should be available to students. “It represents a wide variety of people, trustees, teachers, principals and consultants so that we have a wide variety of input,” Millard said.

After reading the book, the committee will complete an evaluation form that examines a “wide variety of criteria,” including grammar, plausibility, language, plot, etc. “We’re evaluating the book *The Golden Compass*—we’re not evaluating the author; it’s the book we’re looking at,” Millard said.

A memo issued by the board said the books are “apparently written by an atheist where the characters and text are anti-God, anti-Catholic and anti-religion,” the *Toronto Star* reported.

Pullman has made controversial statements, telling *The Washington Post* in 2001 he was “trying to undermine the basis of Christian belief.” In 2003, he said that compared to the Harry Potter series, his books had been “flying under the radar, saying things that are far more subversive than anything poor old Harry has said. My books are about killing God.”

The board is unsure how many copies of the Pullman books are in circulation at its 37 elementary schools because they were not purchased centrally and are not a part of the curriculum.

“We have a policy and procedure whereby individual parents, staff, students or community members can apply to have material reviewed. That’s what happened in this case,” Superintendent of Curriculum Service Rick McDonald said, adding he did not know who lodged the complaint. Any move to ban the book would be taken to trustees.

After evaluation forms are received, the committee will submit recommendations to the board of trustees, who will then vote on whether the book is suitable for students.

The Dufferin-Peel Catholic board in Ontario is also conducting an informal review into the content of the book. Staff members have been asked to read the book and report back on the plot.

Similar concerns prompted a Catholic organization in the U.S. to urge parents to boycott a movie version of the book that was released in December.

Trottier compared the recent backlash to the campaign against Salman Rushdie’s *The Satanic Verses*. The novel prompted Iran’s Ayatollah Khomeini to issue a fatwa—a

religious edict—against the author for insulting Islam that spurred death threats and inevitably forced Rushdie into exile.

“While the campaign against *The Golden Compass* is a mere microcosm of the *Satanic Verses* affair, it is still an overt example of the discrimination against atheists by the religious,” Trottier wrote.

Pullman, known for his “legendary atheism” in the British press, has never shied away from his controversial views on religion. “The trouble is that all too often in human history, churches and priesthoods have set themselves up to rule people’s lives in the name of some invisible god (and they’re all invisible, because they don’t exist)—and done terrible damage,” Pullman writes on his Web site. “In the name of their god, they have burned, hanged, tortured, maimed, robbed, violated, and enslaved millions of their fellow creatures, and done so with the happy conviction that they were doing the will of God, and they would go to Heaven for it.” Reported in: *Toronto Star*, November 22; [ctv.ca](http://ctv.ca), November 23.

### **Bedford County, Virginia**

The removal of two books from school libraries in Bedford County since August has sparked a system-wide review of how the schools select library books and how they should handle challenges to a book’s content. In both cases, administrators at the schools pulled the books from the shelves after parental complaints. While the school system’s general policy on content challenges calls for a formal committee’s review of the book, that policy was not followed with either book.

The first book, *The Making of Dr. Truelove*, by Derrick Barnes, was removed from the Liberty High School library in late August because of “sexually explicit” content, said Victor Gosnell, director of technology and media for the district.

In early October, Thomas Jefferson Elementary School removed *Totally Joe*, by James Howe, a book about a homosexual middle-school boy struggling with family, bullies and friends. Officials decided the book is not appropriate for elementary-school students, but have not yet decided whether to allow the book in middle or high schools, Gosnell said.

The recent incidents spurred the creation of a 15-member Library Selection and Challenges Committee of library media specialists from each of the district’s middle and high schools and from nine of the county’s fifteen elementary schools.

The library media specialist from Liberty High decided to purchase *The Making of Dr. Truelove* in much the same way she buys most books—based on reviews and recommendations from organizations such as the American Library Association, Gosnell said. “The book was recommended by the ALA’s Young Adult Library Services Association,” he

said. “It was on its 2007 List of Quick Picks for Reluctant Young Adult Readers . . . so the book was selected based on that recommendation and a very generic review of the book that didn’t give a lot of specific detail.”

The first time a student checked the book out, their parent “thumbed through it” and contacted the school with the complaint that the material was inappropriate, Gosnell said. “The wording in the book, and the activities in the book were very sexually explicit,” he said.

When the library media specialist saw the book’s contents, she agreed that it was inappropriate and removed it, Gosnell said.

According to New York-based Simon & Schuster Children’s Publishing Division, the book’s publisher, it is recommended for ages 16 and up, or grade 11 and up.

In the case of *Totally Joe*, Bedford County School Board member David Black said his niece was the first to check it out from the Thomas Jefferson library. Her mother read some of it and “there was concern right away,” he said. “There was content in the book that I felt was inappropriate for elementary school students.”

That book also was chosen based on its awards and the library media specialist’s familiarity with the author, who has written dozens of children’s books, including the “Bunnica” series. The book focuses on seventh-grader Joe Bunch, who has always known that he’s different from other boys. Joe’s first boyfriend, Colin, has a family from which he feels he must hide his sexuality. So when the school bully spreads a rumor that the two were kissing, Colin gets scared and breaks up with Joe.

The book was listed by the ALA as a “Notable Children’s Book” and a nominee for “Best Books for Young Adults” and “Quick Picks,” and also has won awards from nine other organizations, according to Simon & Schuster, the book’s publisher.

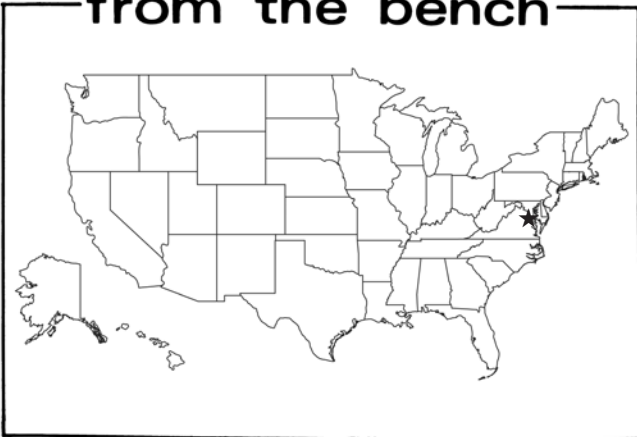
Black said books should be selected based on more than just their reputation. “Even though it’s listed on some list somewhere, we need to really understand the book and its contents before we buy it, and definitely before we put it on the shelf for children to choose from,” he said. “It’s hard to read every book in the library, but a quick review of the cover on this one would have made it clear what the topic was.”

The back cover of the book includes an excerpt about the main character and the rumor circulating that he and Colin had kissed. The book is recommended for ages 10 and up or grades 5 and up, according to the publisher.

If the book was in an elementary school library, Black said, all students, even those younger than the recommended age, would have access to it. “Whether or not it will be in the middle schools—I think that needs to be discussed,” he said.

*(continued on page 35)*

## from the bench



### U.S. Supreme Court

As promised, the Justice Department asked the Supreme Court November 1 to review a lower court's decision that the Federal Communications Commission failed to justify punishing broadcasters for on-air swearing, saying that, as it stands, broadcasters have a pass to swear at will, and the FCC's ability to regulate indecency at all is at stake.

In its petition to the court, Justice said the FCC explained its decision and the lower court—while remanding the FCC's decision back to the commission for better justification—essentially said it wasn't likely to be able to justify it. And, importantly, it said that the lower-court ruling was in conflict with the Supreme Court's *Pacifica* decision upholding the commission's power to regulate indecency.

How the FCC is able to exercise that power, or if it can at all, could be at issue if the Supremes take the case. "The court of appeals' rejection of the commission's contextual analysis strikes at the heart of broadcast indecency regulatory framework," Justice said. "The Supremes are more likely to take cases with constitutional implications"—in this case, First Amendment protections.

The department also said the decision was in conflict with another appeals-court decision. One of the Supreme Court's functions is to resolve disputes between appeals courts, as well as conflicts with its own prior decisions.

The Fox case involved Fox's 2002 and 2003 airings of the Billboard Music Awards, which included airing the

words "shit" and "fucking" from Nicole Richie and Cher. The FCC found the words indecent as aired. Fox appealed, and the U.S. Court of Appeals for the Second Circuit concluded that the FCC's decision was arbitrary and capricious and the commission had not sufficiently defended what was a change in policy on so-called fleeting expletives.

In a stinging rebuke, the Second Circuit ruled that the FCC had not produced "any evidence that suggests that a fleeting expletive is harmful." The appeals court also had problems with the FCC's argument that the words always had a sexual connotation.

It also was not persuaded by the FCC's declaration that it was regulating fleeting expletives out of concern for the public's exposure to the language on the airwaves, since the commission did not prohibit them in every circumstance—for example, in reporting in a news story about the oral arguments in which the language was used in court.

The FCC had said that it wanted to protect viewers from the "first blow" from even fleeting curses, but the court wondered why the blow would be any less if it came during a news story. The FCC argued that it needed to take context into account.

In asking for High Court review, the Justice Department said the Second Circuit decision was in direct opposition with the Supreme Court's decision in *Pacifica*, in which the court said "context is all-important."

"By faulting the commission for exercising the contextual judgment that *Pacifica* mandated," said Justice in its petition, "the court of appeals appears to have put the FCC to a choice between allowing one free use of any expletive, no matter how graphic or gratuitous, or else adopting a (likely unconstitutional) across-the-board prohibition against expletives." The department also argued that the FCC made a thorough, reasoned explanation of its "change in policy."

Since the Second Circuit remanded the decision back to the FCC for better justification, akin to the remand of the FCC's media-ownership rules, Justice conceded that this was not a case the High Court might ordinarily take. But it pointed out that it was something of a Sisyphean errand given that the court also said the FCC probably couldn't come up with a sufficient defense. Reported in: *Broadcasting and Cable*, November 1.

### secrecy

#### Washington, D.C.

A federal judge on October 1 tossed out part of a 2001 order by President George W. Bush that lets former presidents keep some of their presidential papers secret indefinitely. U.S. District Court Judge Colleen Kollar-Kotelly ruled that the U.S. Archivist's reliance on the executive order to delay release of the papers of former presidents is "arbitrary, capricious, an abuse of discretion and not in accordance with law."

Criticized by historians, the November 2001 order allowed the White House or a former president to block release of a former president's papers and put the onus on researchers to show a "specific need" for many types of records.

"The Bush Order effectively eliminated the archivist's discretion to release a former president's documents while such documents are pending a former president's review, which can be extended—presumably indefinitely," Kollar-Kotelly wrote in a 38-page ruling. "The average delay caused by a former president's review of a document request is 170 days or nearly, six months," the judge wrote, adding that the Archivist's reliance on the Bush order has "caused" the delay.

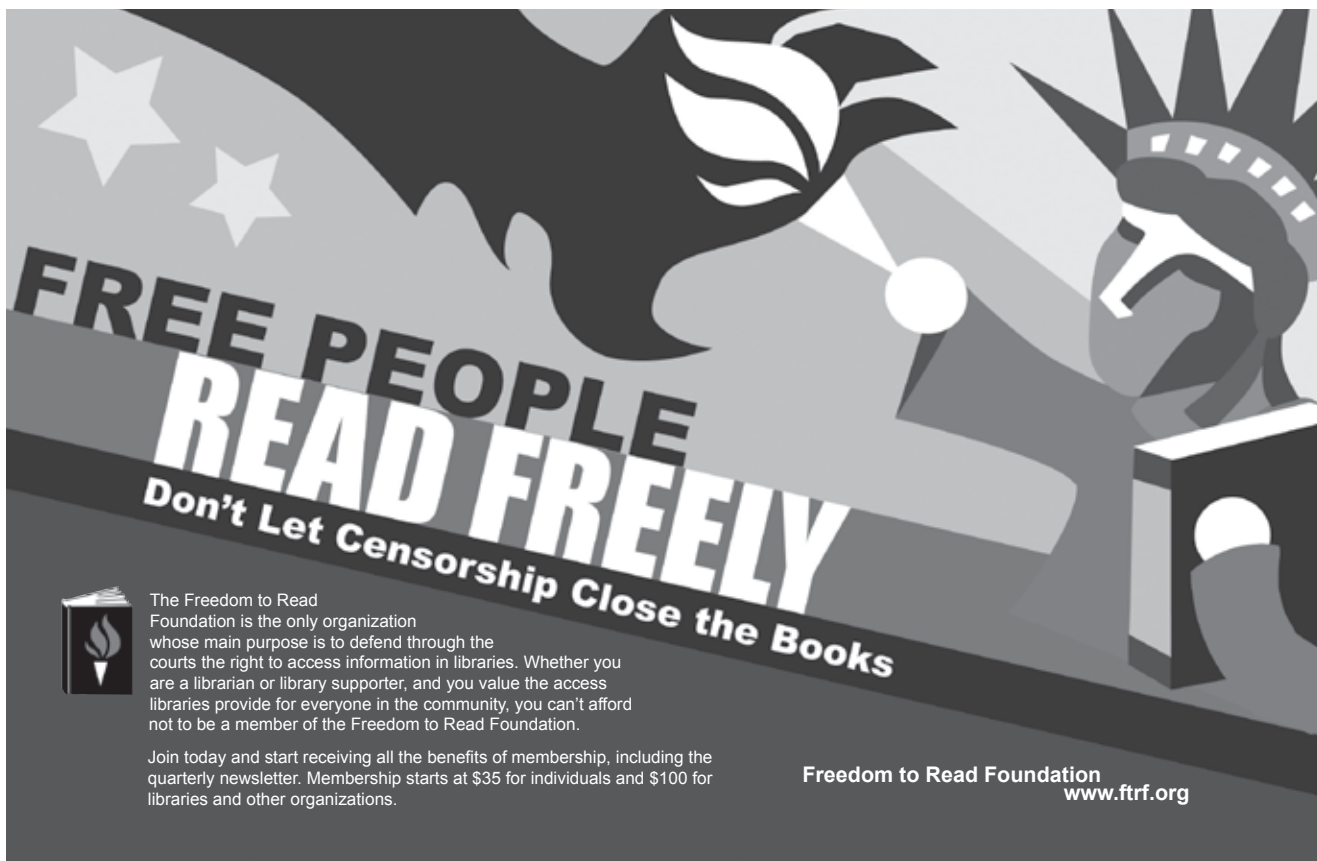
The judge did not address provisions of the Executive Order extending the authority over release of presidential papers to a former president's designated representative or to former vice presidents.

The ruling came in a lawsuit led by the National Security Archives, a non-governmental research institute and library at George Washington University. It argued that the Bush order severely slowed or prevented the release of historic presidential papers.


Meredith Fuchs, general counsel for the National Security Archive, said the court had avoided "the hard questions" about the role former presidents, former vice presidents, and their heirs can play when it comes to disclosure of presidential records.

"Unless the executive order is reversed or withdrawn, decisions about the release of records from this administration may ultimately be made by the Bush daughters," Fuchs said in a statement.

Despite a veto threat, the U.S. House of Representatives passed legislation in March to overturn the order. A similar bill has stalled in the Senate. Reported in: Reuters, October 2. □



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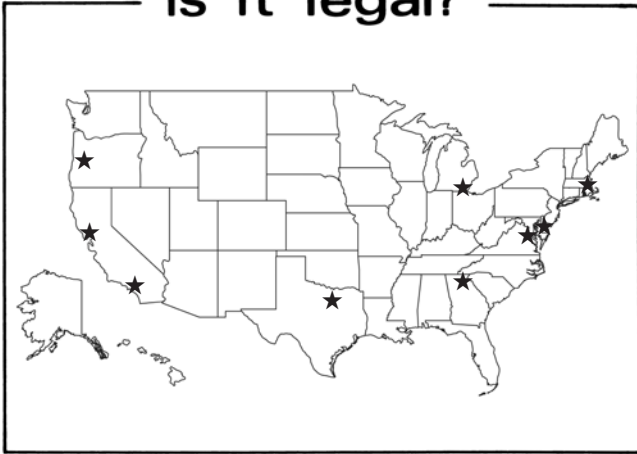
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## is it legal?



## libraries

### Washington, D.C.

A little-remarked feature of pending federal legislation on domestic surveillance has provoked alarm among university and public librarians who say it could allow federal intelligence-gathering on library patrons without sufficient court oversight.

Draft House and Senate bills would allow the government to compel any “communications service provider” to provide access to e-mails and other electronic information within the United States as part of federal surveillance of non-U.S. citizens outside the country.

The Justice Department has previously said that “providers” may include libraries, causing three major university and library groups to worry that the government’s ability to monitor people targeted for surveillance without a warrant would chill students’ and faculty members’ online research activities.

“It is fundamental that when a user enters the library, physically or electronically,” said Jim Neal, the head librarian at Columbia University, “their use of the collections, print or electronic, their communications on library servers and computers, is not going to be subjected to surveillance unless the courts have authorized it.”

Under the legislation, the government could monitor a non-U.S. citizen overseas participating in an online research project through a U.S. university library, and gain access to the communications of all the project participants with that surveillance target, said Al Gidari, a lawyer with the Perkins Coie firm who represents the Association of Research Libraries and the American Library Association.

The bills, which would replace a temporary law amending the Foreign Intelligence Surveillance Act, would not require the government to demonstrate “probable cause” that the foreign person targeted is a terrorist or a spy or to let the FISA court, which grants surveillance warrants, know that the tap will be on a library. Under the Senate bill, a general surveillance program may be authorized yearly by the attorney general and the director of national intelligence. The House’s version would require the FISA court to authorize surveillance directed at people overseas.

The librarians said their concern about such monitoring is rooted in recent history. In the summer of 2005, FBI agents handed an administrative subpoena called a national security letter (NSL) to a Connecticut librarian, and demanded subscriber, billing and other information on patrons who used a specific computer at a branch library. NSLs can be approved by certain FBI agents without court approval. The agents ordered the librarian to keep the demand secret. But he refused to produce the records, and his employer filed suit, challenging the gag order. A federal judge in September 2005 declared the gag order unconstitutional.

Librarians cried out over the issue and in March 2006 won language in the reauthorized USA Patriot Act that specified that libraries acting as book-lenders not be subject to NSLs. But FBI Director Robert S. Mueller, III, said, in written remarks to the Senate Judiciary Committee in May 2006, that “a library is only subject to an NSL if it provides electronic communication services.”

Today, many universities—and by extension their libraries—can be considered Internet service providers, because they run private Internet networks allowing students and faculty to send e-mail, conduct online research and engage in online chats without touching the public system, experts said.

Many universities also have branches overseas, where users can log onto the school network and gain access to the library’s server on U.S. soil. Moreover, university research—especially in the scientific arena—is frequently conducted online and in groups, often internationally, by accessing shared databases and advanced private Internet networks, librarians said.

“For me, the issue is if somebody is going to follow the research thread of a faculty or student, that may be something that needs to happen to protect all of us, but it needs to be done under judicial review and with a warrant,” said Larry Alford, dean of libraries at Philadelphia’s Temple University, which also has campuses in Rome and Tokyo. “The transactions that used to go on inside of a classroom and inside of a library building now can go on electronically and virtually.”

For Neal, who has been a librarian for 34 years, the issue is not academic. He recalled his time working at Penn State University in the 1980s, at the height of the Cold War, when the FBI demanded information about the reading habits of

international students. The staff refused, but the experience jolted Neal, who said he felt that library users' privacy rights had been "violated."

Greg Nojeim, senior counsel at the Center for Democracy and Technology, said: "The librarians have fingered an issue that is particularly problematic in the Senate legislation. When a group of Americans communicate with one targeted non-American abroad, everyone's privacy is at risk. We are not saying the government should have to seek a warrant for every overseas foreigner, but court oversight is essential."

The Association of Research Libraries, representing 123 institutions, the American Library Association, with more than 65,000 members, and the Association of American Universities, representing 60 U.S. institutions, each say they seek to amend the draft bills to make clear that the term "communications provider" does not include libraries. Although a report by the House Judiciary Committee states that libraries are not meant to be subject to the provision, it does not have the force of law, according to Prudence S. Adler, associate executive director of the research library group.

House intelligence committee Chairman Silvestre Reyes (D-TX) said the House bill, produced by Democrats, would protect Americans' constitutional rights. He noted that the measure would allow the FISA court to "review the targeting procedures to ensure that Americans aren't targeted."

Sen. Christopher S. Bond (R-MO), the intelligence committee vice chairman, who helped craft the bipartisan Senate bill, said librarians need not worry. The government, he said, would seek to monitor only "suspected terrorists." If a surveillance target communicates with a U.S. citizen or a resident who is not a target, the latter's communications would be "minimized" or blacked out, he said, and the bill would require a court to approve the minimization procedures.

"You know what happens if that [library exception] gets into the bill?" Bond said. "You would have your libraries filled with al-Qaeda operatives."

Justice Department spokesman Dean Boyd declined to specify which institutions might qualify as "electronic communications service providers," calling the question hypothetical. But he said the administration opposes exceptions for libraries or others, because they "could lead to an unworkable patchwork of legal authorities" and impede effective intelligence gathering. Reported in: *Washington Post*, November 2.

### **Dawsonville, Georgia**

A Pakistani man charged with conspiring to provide material support to terrorists claims that the FBI obtained evidence against him illegally when an agent went into the Chestatee Regional Library in Dawsonville to record his activities at a library computer on March 21, 2006, two

days before his arrest.

Jack Martin, an attorney for Syed Haris Ahmed, an engineering student at Georgia Institute of Technology at the time, filed a motion in U.S. District Court for the Northern District of Georgia alleging that an FBI agent followed his client into the library and viewed the browser history function to find out what Web sites and e-mail addresses he had been accessing.

"The actions of the government agent," the motion read, "contrary to the policies and procedures of the library, including policies to ensure the privacy of its authorized library users, violated the defendant's reasonable expectations of privacy."

"We have no record of the FBI being here," Library Director Claudia Gibson said, "although we did get a call later from the Georgia Bureau of Investigation asking about our policies." She added, "The agent would not have been able to go to a browser history on one of our computers, because that is erased after a patron logs off as a privacy protection measure. But if the man got up and left without logging off, the agent might have found his web history or even e-mail records."

U.S. Attorney David Nahmias said that "public libraries are not safe havens for terrorist-related activity," adding, "The FBI's actions were lawful and appropriate as we will demonstrate when we respond to the motion in court." Ahmed and his codefendant Ehsanul Islam Sadequee are accused of aiding a Canadian terrorist group by making videotapes of the U.S. Capitol building and other potential targets. Reported in: *American Libraries* online, October 12.

### **Farmers Branch, Texas**

Even as libraries across the country use video games and YouTube to draw teens in, some Farmers Branch officials have called for a return to the days when the stacks were for research and youthful chatter was met with a "Shhhh!"

The Manske Library staff is "letting too much wildness come into play," City Council member David Koch said at a council meeting. And Mayor Pro Tem Tim O'Hare said that on two of his recent visits, the library was "a zoo." Council members said offenses from making noise to making out indicate the library staff isn't in tune with what Koch called the council's "conservative and traditional values."

Library board member Matt Wenthold acknowledged that the library gets noisy but said that's mostly because of its architecture and acoustics. "It's one big hay barn, and noise does carry," he said. "And kids probably make more noise in the library than they did in 1955. This certainly is not 1955 anymore in Farmers Branch, and I think that's what some people want to bring back."

Farmers Branch council members have also suggested that the library focus on learning instead of entertainment, perhaps banning or restricting access to such Web sites as

MySpace and YouTube on library computers. And O'Hare said the library may not be the right place for political expression, such as a recent immigration documentary and the art exhibit "Clash of Cultures."

Library Director Danita Barber said the documentary was not sponsored by the library but was shown by Las Americans Film Network in a rented meeting room. The "Clash of Cultures" artist, Alex Trevino, has said the works were inspired in part by resentment toward Hispanics and by the Farmers Branch illegal-immigration debate.

"People don't go to the libraries, I don't think, to find themselves in the middle of a political debate, whether it's for issues I support or issues I don't support," said O'Hare, who spearheaded the city's efforts against illegal immigration. The police have been working with federal Immigration and Customs Enforcement to deport crime suspects found to be in the country illegally. And residents recently voted to ban renting to illegal immigrants, though legal challenges have blocked enforcement.

Koch said that with the library short on space, perhaps some entertainment items, such as videos and CDs, should be removed. That's opposite the tack taken by Fort Worth's Central Library, which is dedicating a room to video gaming. Koch also suggested restricting the Farmers Branch library to residents. Neighboring Addison, which has no library, pays for its residents to be able to use the one in Farmers Branch. And Carrollton and Farmers Branch have an agreement that residents of each city can use the libraries in the other.

But it's the atmosphere that most concerns Koch. He and O'Hare said they've received complaints from several residents that the library isn't enforcing proper decorum.

Barber said the staff has worked to keep children quiet. But she said Monday nights are a challenge, because of homework assignments and English as a second language classes in the meeting room. She acknowledged that while parents are in the class, their children may roam. But she said that if the kids cause problems, the staff takes them to their parents.

Several patrons acknowledged hearing—or making—too much noise at times, though they said it wasn't a big problem. "This evening was the first time I've seen a bunch of kids in here," said Funmi Okunbolade. She said her 2-year-old "got shushed the last time we were in here—rightfully so. He was running around and acting crazy."

Kay Burge of Addison said kids are sometimes louder than they should be, but so are some adults. The culture is different for today's younger generation, she said: "To have them come here can change lives, and I do not want to say words to push them away."

Lisa Sewell of Carrollton said she understood the council's concerns. "I have kind of noticed it, kids being loud and yelling," she said. "I've seen kids in the area here making out, in the gallery, just stuff that's not appropriate." But most users said that for young people, the library—and the entertainment it provides—is a good alternative to the streets.

O'Hare said he also wants children in the library. "We love kids to learn, we want kids to be safe, and we love kids to be doing something constructive with their time," he said. "However, you want them to behave, and you want the library to be a place people can go and relax and spend some quiet time alone and study."

Koch said he worried about children encountering predators while accessing MySpace on city computers. The library's support services manager, Jennifer Acker, said that when minors apply for a library card, their parents are asked whether they should be authorized to use the Internet. "If they don't have permission, it doesn't let them log in" when they enter their card number, she said. Reported in: *Dallas Morning News*, October 15.

## school

### Waxahachie, Texas

A Waxahachie High School sophomore is at the center of a First Amendment debate after school officials told him he could not wear a T-shirt that supports Democratic presidential candidate John Edwards.

The parents of 15-year-old Paul T. "Pete" Palmer asked school officials to reconsider the school district's dress code policy and threatened to sue if no changes are made. Pete's dad, attorney Paul D. Palmer, said that the school district is entitled to a dress code as long as it doesn't violate students' constitutional rights to free political and religious expression.

"This is not about a hippie-dippy idea—'everyone can wear whatever they want,'" Palmer said. "'This is who I support for president.' He has a right to stick that on his shirt."

The school district declined to provide specifics on the case but provided a written statement, which included the following: "The district also values student speech rights. . . . Our schools, however, are not unbounded forums for practicing student speech, and our primary focus remains creating and maintaining an environment conducive to learning."

Pete said he woke up early the morning of September 21 and threw on clothes before rushing off to football practice. After practice, however, a school official pulled him aside and told him he was violating the dress code policy approved in May, which prohibits all-black outfits. He was sent to the administrative offices and told to change clothes before returning to class. Pete called his father.

"He wanted me to bring another shirt," Palmer said. He then asked Pete, "How about that Edwards shirt? And he said OK."

After changing into the shirt, which read "John Edwards 08" and included a Web site address, he was told again that his clothing violated school policy and he would not be allowed to return to class until he complied, his parents

said. The school dress code policy allows T-shirts that promote Waxahachie clubs, organizations and sports or other spirit wear. College and university T-shirts or solid-colored T-shirts are acceptable.

“All polo style [knit] shirts and shirts with colors containing pictures or slogans that are provocative, offensive, sexual or suggestive in nature, vulgar, lewd or obscene are prohibited. Alcohol and tobacco pictures or slogans are also prohibited,” according to the school district’s dress code policy.

Pete’s mom then brought him a red T-shirt and he returned to class.

The family said they had discussed Waxahachie’s dress code during the summer and had been following a Vermont case in which a student was suspended for wearing an anti-Bush T-shirt to school. An appeals court upheld the student’s rights and the Supreme Court rejected the school’s appeal.

Pete said he did not intend to challenge the dress code that day until he got pulled aside for the black outfit. When his father asked about the Edwards shirt, Pete said, “There was an intention of challenging it at that point and seeing their reaction to it.”

The school held a grievance hearing on the matter October 3. In a letter to Pete’s parents, Waxahachie High School Principal David Nix denied the family’s assertion that Pete’s First Amendment rights were being violated. The letter said students “have a number of opportunities to express themselves through the wearing of buttons, jewelry or other symbols, forming a school-sponsored club, and speaking at limited public forum opportunities available during the day.” The principal also wrote that he was available to assist Pete with forming an approved club or organization such as “Waxahachie High School Students for Edwards.”

“This would allow Pete the opportunity to express support for the political candidate of his choice through a school-sponsored organization,” the letter said.

Palmer said his family has the opportunity to appeal the principal’s decision and was trying to resolve the issue with the school district.

Pete said he has gotten support from his peers. “The dress code they have right now is not particularly strict,” he said. “It’s not all that bad. They need to make exceptions for free speech for political issues because it’s a constitutional right.” Reported in: *Dallas Morning News*, October 11.

## colleges and universities

### Dover, Delaware

The University of Delaware announced November 1 that it had suspended its residence-life education program, days after a prominent free-speech group accused the institution of engaging in “systematic thought reform.”

In a message to the university, Patrick T. Harker, Delaware’s president, said administrators and faculty members would review the program. “There are questions about its practices that must be addressed,” Harker said, “and there are reasons for concern that the actual purpose is not being fulfilled.”

In a letter to the university’s president, the Foundation for Individual Rights in Education said Delaware’s program promotes specific views on race, sexuality, and morality among students. The group, which is known as FIRE, also likened the program to a description of thought control in the novel *1984*, by George Orwell.

The organization cited several documents describing Delaware’s program, a curriculum-based attempt to promote self-examination and discussion among the 7,000 students who live in campus dorms. According to one document, resident assistants recently attended a “diversity facilitation training” session, where they received a list of definitions of racism from a visiting speaker. The term “racist,” the list said, “applied to all white people (i.e., people of European descent) living in the United States.” FIRE also said that the program pressured students to adopt specific ideological views on various issues, such as multiculturalism and the environment.

In a letter to FIRE, Michael A. Gilbert, Delaware’s vice president for student life, said there had been some “misteps” in the program but rebuffed many of the group’s claims, including its assertion that the university requires students to participate in the program or to adopt specific views. “This type of goal,” Gilbert wrote, “is both highly undesired and wholly unattainable.”

In his letter, Harker said Gilbert would work with the university’s Faculty Senate to determine the appropriate way for residence-life programs to “support the intellectual, cultural, and ethical development of students.” Reported in: *Chronicle of Higher Education* online, November 2.

### Waltham, Massachusetts

A faculty committee at Brandeis University agreed November 28 with a professor of politics who said Brandeis had violated his academic freedom by putting a monitor in his classroom and requiring him to undergo sensitivity training after students complained that he made racist remarks during a lecture.

The professor, Donald Hindley, who has worked at the university for more than forty years, likened a Brandeis investigation into his remarks to the 17th-century witch trials in nearby Salem, Massachusetts.

Hindley’s trials began in October, when some students complained to Steven L. Burg, chairman of the politics department, about remarks they said Hindley had made in his course on Latin American politics. The university’s two student newspapers say the students accused Hindley of using the terms “wetback” and “negrita,” which can mean



“little black one” in Spanish. The word can be used as a term of endearment in certain cultural contexts but may also be regarded as offensive in others.

University administrators talked to Hindley about the complaints, and, on November 1, he received a letter from the provost, Marty Wyngaarden Krauss, saying that he had violated university policy. While neither the university nor Hindley would make the letter available, the *Brandeis Hoot*, a student newspaper, quoted Krauss’s letter as saying: “The university will not tolerate inappropriate, racial, and discriminatory conduct by members of its faculty.”

The letter advised Hindley to “correct your conduct” or face disciplinary action “including termination.”

Hindley refused to participate in sensitivity training and filed an appeal of the university’s findings with the campus’s Committee on Faculty Rights and Responsibilities. After its own investigation, that panel ruled not only that the provost’s actions threatened Hindley’s academic freedom but also that the punishments imposed were “excessive” and that the university’s handling of its inquiry into the complaints was flawed.

The committee said university officials should have attempted to resolve the complaints informally, between Hindley and the students, and it recommended that the provost’s decision be withdrawn.

A university spokesman said administrators were not yet prepared to comment on the faculty committee’s ruling. Earlier, the Faculty Senate adopted a resolution that said Brandeis administrators had violated the faculty handbook because they did not bring the case to the Faculty Senate before threatening to terminate Hindley’s employment.

Hindley said that “no rational person will be able to honestly conclude, in the end, that I disrespected, harassed, or otherwise attacked any student in my class.” Hindley has said, and students who support him have agreed, that he used the terms in a descriptive way, and that he did not direct them at a particular student. The professor argued that he should be able to discuss ideas and say words that some students may find uncomfortable, as long as they are germane to his course.

Burg, the politics chairman, said the university had “a moral and legal responsibility” to respond to students’ complaints. He said if students had made similar complaints about his own teaching, he would have “expressed shock and dismay” and “taken corrective action immediately,” leaving the impression that Hindley could have avoided trouble if he had done so. Reported in: *Chronicle of Higher Education* online, November 30.

### **Ann Arbor, Michigan**

Three faculty members at Ave Maria School of Law have sued the school’s dean and board chairman, saying they were suspended in retaliation for reporting conduct by top law-school officials that they suspected was illegal.

The complaint was filed October 17 in a state court in Ann Arbor against Thomas S. Monaghan, the law-school’s founder and chair of its Board of Governors, and Bernard Dobranski, the school’s president and dean. The law-school’s foundation also was named in the suit.

The plaintiffs, Stephen J. Safranek, Edward C. Lyons, and Philip A. Pucillo, have been involved in an acrimonious dispute over the Catholic law school’s planned move from Ann Arbor to property that Monaghan owns in southwestern Florida. Monaghan, who made a fortune selling his Domino’s Pizza empire, holds a “significant financial interest” in the planned community of Ave Maria, Florida, and has publicly said that the Virgin Mary directed him to develop the town and Ave Maria University there, according to the suit.

A majority of the law-school’s faculty voted against the move last year, and also voted no confidence in Dobranski as dean. Critics of the move, which is planned for the summer of 2009, say it will hurt the school, which accepted its first class in 2000 and received American Bar Association accreditation five years later.

The plaintiffs’ lawyer, Deborah L. Gordon, said her clients were removed from their jobs after complaining to law enforcement and other governmental agencies about what the lawsuit describes as “illegal conduct” by Dobranski and Monaghan. She also said the professors were being punished for “refusing to go along with Monaghan’s attempts to improperly control the board by permitting his private, conflicting interests to supersede the best interests of the law school.”

“Their careers have been significantly damaged for no good reason other than the fact that they decided to stand up and tell the truth and shed some light on legal and ethical wrongdoing,” Gordon said.

Dobranski released a one-sentence statement saying, “We are confident that the actions of the School of Law were both proper and legal and we look forward to the court coming to this same conclusion.”

In August, Dobranski denied tenure bids by both Lyons and Pucillo, both associate professors of law, despite the unanimous support they had received from the law school’s Committee on Promotions and Tenure. Both of the men, who were hired in 2001, were suspended with pay.

Safranek, who was one of the original tenured professors at the law school, was ejected from the school and suspended without pay, effective last month, according to the lawsuit.

The suit also accuses law-school staff members of using their positions and law-school resources to obstruct a criminal investigation into allegations that a parish priest unconnected with the university had possessed child pornography. Gordon said Safranek learned that the law school’s chaplain, Father Michael P. Orsi, had helped the priest get such images deleted from his computer, with the help of a technology employee at the law school.

Dobranski released a statement in July saying those allegations had been thoroughly investigated by an outside law firm and found to be “absolutely and unequivocally false.”

Safranek reported the alleged offense to law-enforcement authorities, according to the suit. He also complained that the law school had improperly described one-time U.S. Supreme Court nominee Robert H. Bork as a full-time faculty member, but paid him as an independent contractor, and Safranek questioned the legality of Bork’s treatment on federal tax returns.

Gordon said that about 40 of 135 first-year students had transferred to other law schools this year, and that about half of the faculty had left and been replaced. An Ave Maria spokesman said 30 to 35 students had transferred.

According to the lawsuit, Monaghan threatened to cut off support to the law school unless it moved to Florida, despite assurances he had made to the contrary when the law school was being considered for accreditation. Some faculty members and alumni fear that continued accreditation may be in jeopardy; over the summer, a committee of the American Bar Association questioned whether the school had taken necessary steps to keep a qualified faculty. Reported in: *Chronicle of Higher Education* online, October 19.

### **Eugene, Oregon**

The way things currently stand, a motion filed in federal district court in Oregon in late October could force a legal reevaluation of the recording industry’s strategy of rooting out students who illegally share copyrighted material using peer-to-peer networks. Or, it might not.

The outcome hinges on which of the Oregon attorney general’s arguments, if any, will persuade the court that subpoenas served on behalf of 12 recording companies circumvent established legal procedure. On September 17, the companies issued subpoenas to 17 “Does”—who were identified only by their IP addresses—via the University of Oregon, where they are all students. Such subpoenas are commonly sent to universities, which can match the addresses to the Internet accounts assigned to individual students.

Instead of complying with the subpoenas, as many colleges do, the university decided to challenge them, arguing that they were too broadly written, violate students’ privacy and ignore the Digital Millennium Copyright Act, which in 1998 set out specific procedures that content providers could use to challenge online piracy. Acting for the university, the state’s attorney general filed a motion on October 31 to quash the subpoenas, setting out on uncharted territory that has legal and industry observers watching closely.

“I’m unaware of other colleges and universities that are making the same arguments that Oregon is making,” said Steven L. Worona, director of policy and networking programs for Educause, a nonprofit organization that supports

technology use in higher education.

The motion represents one of the few challenges to the recording industry’s current practice of sending “pre-litigation” letters to students, offering a choice between a discounted settlement or going to court. Since students’ identities aren’t known to the companies themselves, colleges are placed in the reluctant role of de facto enforcers: Some pass the letters on to their students, but some don’t. Theoretically, the process would reach the subpoena stage only if a student chose to refuse a settlement deal or if the college decided not to pass the letter on in the first place.

The recording industry has vigorously defended its methods of protecting its copyrights. Jonathan Lamy, the RIAA’s director of communications, said at an Ohio University forum that his clients’ role was to “help [artists] bring music to the public, to help the marketplace grow.”

In Oregon’s case, it appears that the university initially agreed to cooperate with the companies after receiving pre-litigation letters requesting specific information about alleged violations from users of the campus network. The university’s response, essentially, was that “what we can track down . . . is the location, IP address, and we will track that down and preserve it for you as a first step in the process of resolving it,” said Stephanie Soden, a spokeswoman for the Oregon Department of Justice.

Instead, the motion alleges, the companies filed the subpoenas anyway, citing danger that the sought-after records would be destroyed—even though, according to the attorney general, the university was already cooperating to ensure that that wouldn’t happen. Partially on those disputed grounds, the companies obtained an “ex parte” court order, granting them permission to file the subpoenas through Rule 45 of the Federal Rules of Civil Procedure, which governs the process by which plaintiffs can engage in discovery.

But critics of this process point out that the “ex parte” orders necessarily operate on limited information provided by the companies so that, as a result, they are granted routinely. The university goes further, arguing that invoking Rule 45 circumvents the intended method of combating copyright infringement online set out by the DMCA. The digital copyright law was intended to allow copyright holders to subpoena content providers—today, this category would include YouTube, for example—without going through a court first. Oregon insists that the same procedure should hold for Internet service providers, as well—such as the university—and argues that the record industry should work within DMCA provisions rather than Rule 45.

The question, then, boils down to whether the DMCA overrides Rule 45, or supplements it. “To my knowledge, that argument has not been addressed by any court up until now,” said Fred von Lohmann, a senior staff attorney at the Electronic Frontier Foundation, which criticizes the recording industry’s enforcement tactics.

The motion outlined several other arguments:

- It would be impossible to match IP addresses with individual students for several reasons. The motion argues, for example, that it cannot be determined whether the student in question was using his or her account when the unauthorized activity took place. Furthermore, some computers are in common areas or in dorm rooms with more than one resident.
- The subpoenas themselves were overly broad.
- To comply with the subpoenas, the university would have to violate students' privacy by conducting an investigation that could fall afoul of the Family Educational Rights and Privacy Act.

The next step is unclear, and it may be premature to sound the death knell for pre-litigation letters or any other strict enforcement measures aimed at students who share copyrighted works. One reason is that so many other colleges have complied so far with the industry. Oregon's motion "is pretty unusual. I think the vast majority of universities have caved to the recording industry's subpoena demands. There are some others who have put up a bit more of a fight," von Lohmann said.

One such case, cited in the Oregon motion, involved the College of William and Mary, when a federal court ruled that the industry's subpoenas were valid only through DMCA channels.

"I'm carefully watching how both the individual targets of the suits and their institutions and their ISPs are reacting to all of this, and I think it's certainly too early to say it's a turning point, but I guess people are investigating all of their options," Worona said. Reported in: [insidehighered.com](http://insidehighered.com), November 5.

## **publishing**

### **Washington, D.C.**

In steps that could help end a long-running dispute over how American publishers of academic books and journals may deal with works submitted by scholars in some "enemy" countries, the U.S. Treasury Department has issued new regulations clarifying publishers' rights, and it has agreed to settle a lawsuit brought by several groups representing publishers and authors.

The department's Office of Foreign Assets Control, known as OFAC, published the new regulations in the *Federal Register* on August 30, and on October 1, it agreed to settle the lawsuit, which was filed by the Association of American University Presses and other groups after a series of earlier decisions by that office that had imposed various conditions on publishers regarding works by authors in countries under U.S. trade embargoes.

The earlier regulations, which dated from 1999 but were not widely publicized until 2003, required American publishers to get prior government approval, in the form of a license from the Office of Foreign Assets Control, before

editing manuscripts submitted by authors in embargoed countries. The rules also restricted other services, such as paying royalties to or collaborating with such authors, and adding photographs to or otherwise enhancing the value of their work. The regulations carried stiff penalties for violators: Editors, publishers, and even officers of academic organizations that acted as publishers could face fines of up to \$250,000 and up to 10 years in jail.

The regulations at first required publishers to obtain a special license on a case-by-case basis before editing or publishing work by authors in Cuba, Iran, or Sudan. In 2004, the regulation was eased to require only a more easily obtained "general license" for dealing with such works. (Burma was added to the list of restricted countries in 2005.)

In the settlement agreement, both OFAC and the plaintiffs have won victories, to some degree symbolic. The treasury office will keep its general-license requirement, which appears to be a formality other than in unusual cases involving military sensitivity or direct involvement of embargoed foreign governments in research papers, and it will continue to restrict publication in those cases. The plaintiffs won a stipulation that works published in electronic formats enjoy the same protections as those published in print. Previously, the regulations had not specifically included digital publications among the kinds of "informational materials" that could be freely traded by Americans.

While the lawsuit had challenged the office's authority to impose even a general-license requirement, representatives of the plaintiffs applauded the settlement.

Marc. H. Brodsky, chairman emeritus of the professional and scholarly publishing division of the Association of American Publishers, which is one of the parties in the lawsuit, said in a written statement that the agreement reinstated the original intention of Congress when it passed the Berman Amendment to the Omnibus Trade and Competitiveness Act of 1988 and the Free Trade in Ideas Amendment in 1994, both of which prohibited OFAC from regulating information from embargoed countries.

"It is unfortunate that so much money and time had to be expended by publishers just to bring us back to the obvious conclusion that American publishers have the basic freedom to bring to the American public information about what people in all countries write and think," Mr. Brodsky said in a written statement.

Publishers' concerns about how trade-embargo sanctions applied to them were raised in 2003, when the Institute of Electrical and Electronics Engineers sought a clarification of the 1999 regulations. The Office of Foreign Assets Control responded that providing any service that added value to a work by an author in an embargoed country amounted to a service to that country, and so was prohibited. The engineers' institute then stopped publishing journal articles that required editing, but continued to publish peer-reviewed articles that did not need editing.

Even while criticizing the OFAC ruling as an infringement on academic publishing, several other academic associations took similar steps. Some obtained licenses to edit affected articles. Others ignored or defied the regulations, arguing that such a stance was in line with their own ethical guidelines and legal rights.

After appeals to federal officials and Congress failed to end the dispute, officials from the Association of American Publishers—joined by the Association of American University Presses, and the PEN American Center, an authors' organization—filed a lawsuit in federal court in the fall of 2004. The plaintiffs argued that the regulations were an inappropriate government restraint on academic freedom, and that Congress had prohibited the office from “regulating or prohibiting the import or export of any and all First Amendment protected materials, directly or indirectly.”

Under pressure, OFAC modified its interpretation of the regulations several times, including its introduction of the general-license requirement in 2005. Rep. Howard L. Berman, the California Democrat, who sponsored the 1988 measure that exempted information from trade embargoes, responded at the time that the office's “regulations continue to represent that the government has the inherent legal authority to regulate these activities under a so-called general license,” and that “this violates both the letter and spirit of my amendment.”

Despite OFAC's revisions, uncertainty persisted over what the rules permitted, and some publishers still refrained from publishing works by authors in embargoed countries. Some groups even restricted membership rights for scholars in embargoed countries because their publications and meetings dealt with topics of military significance, like missile-delivery systems, or because individual authors had indirect ties to governments of embargoed countries.

Lawyers for the plaintiffs said they had continued pressing the lawsuit after the 2004 revisions in part to obtain a guarantee that electronic publishing was also free of requirements for prior government approval. They also said they reserved the option of suing the office again if it sought to reinstate similar regulations.

The plaintiffs said that the settlement eased the threat of government action not only against journal publishers, but also against academic presses that have in recent years published, or agreed to publish, works by authors in embargoed countries on such subjects as democracy campaigns in Iran and Cuban archaeology, as well as fiction. Reported in: *Chronicle of Higher Education* online, October 3.

## church and state

### Washington, D.C.

The Defense Department (DOD) allegedly provided two fundamentalist Christian organizations exclusive access

to several military bases around the country. This access became official sanction for these groups to proselytize amid the ranks, despite the fact that such activities were in violation of federal law.

The evangelical Christian groups have posted detailed instruction guides on their Web site that advises their members about tactics to use to win over soldiers, or “pre-Christians,” to evangelical Christianity when visiting military installations around the country.

According to a week-long investigation by the Military Religious Freedom Foundation, a government watchdog organization, the evidence it has uncovered proves the Pentagon has been engaged in a pattern of widespread evangelizing in violation of Clause 3, Article VI of the Constitution, which forbids a religion test for any position in the federal government, and the Establishment Clause of the First Amendment of the Bill of Rights, which says Congress shall make no law regarding an establishment of religion. Furthermore, individuals representing a specific denomination may only offer spiritual guidance to soldiers and are prohibited from using the “machinery of the state” to proselytize or try to convert members of the military.

But that is not the intent of Military Ministry, a fundamentalist Christian organization, according to documents posted on the group's Web site. The group says its members are responsible for “working with Chaplains and Military personnel to bring lost soldiers closer to Christ, build them in their faith and send them out into the world as Government paid missionaries”—a clear-cut violation of federal law.

Military Ministry boasts that it has successfully “targeted” basic training installations, or “gateways” and has converted soldiers to Christianity. “Young recruits are under great pressure as they enter the military at their initial training gateways,” the group has said, according to an archive on its Web site. “The demands of drill instructors push recruits and new cadets to the edge. This is why they are most open to the ‘good news.’ We target specific locations, like Lackland AFB [Air Force base] and Fort Jackson, where large numbers of military members transition early in their career. These sites are excellent locations to pursue our strategic goals.”

Military Ministry is a subsidiary of Campus Crusade for Christ, an evangelical missionary organization. In August, several high-level Pentagon officials were admonished for participating, while in uniform and on active duty, in a promotional video sponsored by Campus Crusade for Christ's Christian Embassy group.

The inspector general issued a 47-page report that said former Pentagon Chaplain Col. Ralph G. Benson knowingly misled the DOD when he requested permission from Pentagon officials to film a video inside the Pentagon, claiming he was interested in gathering information

*(continued on page 30)*



## success stories



## libraries

### Chandler, Arizona

The board of the Chandler Public Library unanimously decided November 15 to retain two items in the face of patron complaints, and declined to move two others to different parts of the library collection. All four objections, which were unrelated to each other, were brought shortly before the September 29-October 6, 2007, celebration of Banned Books Week.

The board had received a request from complainant Patricia Wira to remove comedian George Carlin's audio-book *When Will Jesus Bring the Pork Chops?* systemwide due to what Wira termed Carlin's anti-Christian tone as well as his "sewer mouth and degraded mindset." Trustees also declined to pull the *Phoenix New Times* from the Hamilton branch as requested by area resident Larry Edwards, who had contended that the alternative weekly's advertising and editorial content was inappropriate for students at Hamilton High School, which shares the joint-use library.

Two other titles will remain in the same sections in which complainants first encountered them. Kathleen Subia had asked that *Where Willy Went*, by Nicholas Allan, be moved from the children's shelves to a restricted parenting collection, explaining that her 7-year-old brought the book to her during a library visit and "I don't like being forced into having a discussion about sex." Also challenged was an episode of *Faerie Tale Theatre* on DVD, narrated by Robin Williams, which patron Sandy Ashbaugh wanted moved from the children's to the adult section.

Daniel Pochoda, legal director for the American Civil Liberties Union of Arizona, wrote a letter to the board October 2 asking them not to remove or relocate any materials, arguing that "The fundamental right to freedom of choice and to receive all ideas would be violated by removal or relocation based on the current complaints." No patrons expressed opposition to the titles at the meeting where the board voted. Reported in: *American Libraries Online*, November 16.

### Boulder, Montana

A materials reconsideration committee at Jefferson High School in Boulder, Montana, voted 4-1 November 27 to retain Joyce Carol Oates's *Sexy* in the school-library collection, declining a request by an English teacher on the faculty to have the book removed.

"I can see both sides of the issue," complainant Victoria Foster said after the meeting. She explained that she filed an objection after a student brought the book to her attention, directing her to chapter seven "and that the f-word came up quite a bit." Foster also complained about sexually explicit passages in the novel, which tells the story of a handsome 16-year-old adjusting to his sexuality and his effect on other people's behavior.

According to librarian Diane Thompson, Oates offered her own perspective on the book's review in an e-mail response to junior Nathan Eury, who contacted the novelist as part of his journalism class. "My young adult novels are meant for mature adolescents," Oates wrote, explaining that for teens who "have been largely shielded from contemporary culture, these novels would not be appropriate," and speculating that the town must be "unusually remote and sequestered amid contemporary American society."

Principal Sharyl Allen, who cast the lone dissenting vote, cited Oates's e-mail in asking fellow review-committee members, "If *Sexy* isn't in our library, what's the loss to the community?" Arguing that schools censor anyway by blocking access to some Web sites, she asserted, "We're not a public library."

Thompson said that the school district's reconsideration and selection policy were instrumental in facing the challenge, since they are based on the American Library Association's Library Bill of Rights and the School Library Bill of Rights approved by ALA's American Association of School Librarians in 1969. "With what those state, there really was no way to say a novel like *Sexy* didn't fit in a high school library," she said. Reported in: *American Libraries Online*, November 30.

### Lower Macungie, Pennsylvania

Storytime ceased abruptly when the picture book Eileen Issa was reading her 2 1/2-year-old son surprisingly ended with two men marrying and smooching. The tale about a

disgruntled queen who demanded that her son marry a princess looked like the average children's book to the mother of two when she scooped it up along with about nine others at the Lower Macungie Library. She had no idea the book has been the subject of a federal lawsuit and controversy in other parts of the country.

"I saw them at the altar and I said, 'This can't be what I'm thinking,'" Eileen Issa said, recalling illustrations of the prince holding hands with and kissing his new husband. "I was sick."

Since that day, Issa and her husband, Jeff, have demanded that the library take *King & King* out of circulation. The book will remain on the shelf despite the Issas' complaints and about 40 signatures they've gathered from residents who agree. The library's board of directors on November 29 denied the couple's request for the second time and the township supervisors, who appoint the library directors, have chosen not to overrule the decision.

"I just want kids to enjoy their innocence and their time of growing up," Jeff Issa said, explaining his persistence. "Let them be kids . . . and not worry about homosexuality, race, religion. Just let them live freely as kids."

*King & King* is in the children's corner of the library. The only mention of its homosexual content is a small reference on the copyright page. The library's computer system also notes the classification.

Kathee Rhode, the library's director, said censoring books based on subject matter is the duty of parents, not the library. She said the library strives to provide material representing a spectrum of views and ways of life.

"That's what a public library does, and you make the choice," Rhode said. "We certainly want parents to make that decision for their children—not one parent making that decision for all children."

Rhode said that in her three years as director, no book has been removed from the collection despite at least one other challenge of a graphic novel in the young adult section. In fact, Rhode and Larry Schneider, vice president of the library's board of directors, said they've been advised by an attorney that removing a book because of its subject matter could be considered unconstitutional based on case law and could open the library up to a lawsuit.

"We can't remove it," Schneider said.

At Jeff Issa's request, the library board said it would see if it's legal to place the book in a separate section. Board members said they doubt it is, and none of them expressed enthusiasm for the idea.

After the library denied the Issas' initial request in September, the couple wrote a letter to the township supervisors and attended a November 15 township meeting to voice their displeasure. Although Supervisor Marilyn Jones agreed the book isn't suitable for the children's section of the library, the board decided by a 2-1 vote that the library's decision is final.

Supervisor Chairman Kenneth DeAngelis, who also is

president of the library board, said that if the supervisors interjected, they would be micromanaging the nonprofit library. Though the supervisors appoint the library's board and tax money supports the library, he said, the board is independent.

Rhode said thirty libraries in the state have the book in their collections. The book, originally written in Dutch by Linda de Haan and Stern Nijland and copyrighted in 2000, spawned a federal lawsuit in Massachusetts last year after it was read to second-graders in a public school. Two couples claimed it violated their civil rights, but a federal judge dismissed the case, saying the couples have the right to send their children to private schools or home-school them.

Lawmakers in Oklahoma voted last year to withhold state funding from public libraries that don't place books containing homosexual themes in a separate section in response to complaints about *King & King* and other books.

Rhode said *King & King* was donated to the Lower Macungie Library more than two years ago—the person who donated the book is not recorded in the system—and had been checked out 24 times. Reported in: *Allentown Morning Call*, November 30.

### **Jonesborough, Virginia**

A local author claimed a county mayor discriminated against her after her educational program was pulled from the calendar at a public library. A November 2 newspaper community brief promoted the home schooling discussion and book signing at the Jonesborough Public Library. That afternoon the library canceled the event.

The author charged that her program was pulled because of one government official's opinion. But the official said his concern had been misinterpreted and the program was rescheduled.

Sonya Haskins' kitchen is a classroom for her five children. She's a mother, teacher and author. Her most recent book is about home schooling. The Jonesborough Public Library scheduled Haskins to lead an informational session about home schooling but Haskins said the library pulled the program at the request of Washington County Mayor George Jaynes.

"He said she had to retract it and cancel the program because it's a public building paid for with public taxes and they have an obligation to support the public school system and doing anything about home schooling was a conflict of interest," Haskins said.

Haskins said Jaynes needs a lesson about the Constitution. "That seems to me like it's a violation of my First Amendment rights because we do have freedom of speech," Haskins said. "The library is a public building which means they are allowed to sponsor programs on any topic. A government official can't step in and say, yes we do do programs on these different things, but you know, I just don't particularly like that topic."

Jaynes said he did not force the library to cancel the program. "I said it was not right to have a book signing promoting something against our schools," he said. Jaynes said the county loses \$7,000 a year for every child in home school.

The library canceled the program, but Washington County attorney John Rambo said that wasn't Jaynes' intention. "The librarian has described it to me as a mis-communication. The employee felt like the mayor was telling her to cancel the program. The mayor told her that's not what he intended. He wanted them to reconsider whether they were going to have these types of programs," Rambo said.

Rambo discussed the issue with library staff. "County officials cannot influence their decisions in that regard, they have to run that library independently," Rambo said.

Now, the program is back on. Sonya Haskins hopes folks can see past the controversy and take a closer look at an educational alternative.

"The program was never intended to be against public schools. The program was an informational program about home school methods," Haskins said. Reported in: *Bristol Herald-Courier*, November 5.

### **Williamsburg, Virginia**

After a challenge and three appeals, the York County School Board has chosen to keep *Tripping Over the Lunch Lady and Other Short Stories* in the library at Magruder Elementary School in Williamsburg despite claims that it is offensive to children with loved ones serving in the military and inappropriate for elementary school students.

The book was given to students as part of an optional reading program in April. Parent Cyndi Treiber, whose husband is serving in Iraq, asked that the book be removed from the school library due to references to war, bombs, and soldier casualties in one of the short stories.

"We could hardly believe this content was in a children's book . . . and had been passed out in a county with the largest military child percentage in Hampton Roads," Treiber wrote in a letter to Superintendent Steven Staples. Approximately 42% of students attending the school district have parents in the military.

Treiber also said the school should have followed publisher Dial Books' recommendation that the book was suitable for students in 5th–7th grades. Her son was in 3rd grade when he read it.

The school board, however, upheld previous appeal decisions after reviewing the book, examining the makeup of the appeal committees, and contacting county residents and military families for their opinion. "We certainly considered [Treiber's] concern and took it very seriously, but felt the school had addressed it and felt the book was appropriate to place in the Magruder Elementary library," Chief Academic Officer Jennifer Parish said. She also noted that the district had considered the publisher's age recom-

mendations, but wanted to provide a book that could challenge students. Reported in: *American Libraries Online*, October 19.

## **schools**

### **Olathe, Kansas**

The Olathe School Board rejected a parent's appeal November 1, voting 5-2 to keep the John Steinbeck novel *Of Mice and Men* part of the ninth-grade curriculum. This issue came to the board's attention after Olathe parent Coni Leoni asked the district to remove the book from the curriculum. She told board members to fulfill their "moral duty" by banishing what she called a worthless, profanity-riddled book.

Leoni complained that *Of Mice and Men*—the story of two migrant ranch workers in Depression-era California—is derogatory toward African-Americans, women and the developmentally disabled. The book also contains references to casual sex, prostitution, booze and "unlawful killing," Leoni said. "There are three pages of this trash," Leoni said.

Under current district policy, parents who don't want their children reading *Of Mice and Men* or any other novel can "opt out" of the assignment. The teacher and parent then agree on a different book for the student to read. Leoni said she thinks that's not enough.

That's why she filed a formal request for the district to reconsider *Of Mice and Men* in June. At that point, the district formed a review committee composed of teachers, administrators, and two community patrons. The committee members decided the book had enough literary merit to stay in curriculum.

Kay Haas, district language arts/reading coordinator, said the book is rich in "characterization, setting, theme and figurative language." She added that *Of Mice and Men* is unique because it can be analyzed at a high critical level of thinking, but isn't overly challenging to read. That makes it ideal, she said, for both pre-AP and regular English ninth-grade students.

Leoni, not satisfied with the committee's decision, appealed to Superintendent Pat All. When All told Leoni *Of Mice and Men* should stay in the school curriculum, Leoni took her plea to the school board, which voted to keep the book in Olathe schools. Two board members—Jim Churchman and Mike Poland—voted to remove the book.

"I'm no literary giant. I'm an engineer, so I like books with facts in them," Poland said at the meeting. He added that Olathe is a "city of character" and that the district should focus on teaching respect and proper language. Poland said that many district households value *The Bible*, and that the subject matter in *Of Mice and Men* is inconsistent with those families' values. "It's not about censorship," Poland said.

Board President Kevin Gilmore said if the board begins removing books, “We’re going to find ourselves in a position we don’t want to be in.”

The Olathe School District was in an undesirable position in the early 1990s, when it removed *Annie on My Mind*, a book about a lesbian relationship, from district library shelves. The district was subsequently sued by The American Civil Liberties Union. A federal court ruled that the school board did not have the right to remove the book.

Board Member Harlan Parker said he based his decision on respect for the Constitution, specifically the First Amendment, which guarantees freedom of the press. “The public has the right to be exposed to the book. I see this as censorship and I can’t support that,” Parker said.

Board members Rita Ashley, Debora Daniels and Linda Wilhelm also voted to keep the book in ninth-grade curriculum.

“I think they were cowards,” Leoni said. “I just feel the Founding Fathers did not intend freedom of speech for this situation,” Leoni said, adding that the community should have the ultimate say on what schools teach children.

Amy Martin, an Olathe parent, said she was “troubled” that Poland and Churchman voted to override the review committee’s decision. “Curriculum should be determined by experts and not subject to the extreme viewpoints of a minority,” Martin said. Martin, a member of Olathe Schools First, an independent patrons group, said she thought the book was rich in literary value, and that she wanted her children to read it.

“Most parents feel the values they have instilled in their children are strong enough to withstand exposure to offensive language,” she said.

Since Leoni was unsuccessful in her attempt to get the book removed, she said she’s pushing the district to send letters to parents of ninth-grade students that include a complete reading list for the school year. She also wants the letter to include a summary of profane material in each assigned book.

The district has other plans. Alison Banikowski, associate superintendent for teaching and learning, said that the district is drafting a sample letter that will be sent to all ninth-grade language arts teachers, who will each customize it with their class’s assigned reading list. Profanity warnings won’t be included in the letter, which will also not require a signature from parents. Reported in: *Kansas City Star*, November 6.

### Harford County, Maryland

Harford County’s school superintendent has reversed her decision to bar a provocative book from a course for high school freshmen, announcing November 19 that *The Chocolate War*, by Robert Cormier, can return to classrooms.

Under Superintendent Jacqueline C. Haas’ decision, teachers have the option of using *The Chocolate War* in

a course that deals with harassment and decision-making but must get permission from all parents of students in a class. Teachers who choose to use *The Chocolate War* will have to inform the school system’s central administrators. Under these stipulations, the novel can, after a seven-month absence, be used again as required reading in a course designed to ease the transition to high school. But another book, *Inventing Elliot*, will be the standard assigned literary text, Haas said.

“The two books have different strengths,” she said. “*The Chocolate War* has lots of action in it. . . . *Inventing Elliot* is a great character study. Someone working with students in the standard format will be using *Inventing Elliot*.”

“If a teacher has a group of students that need action to get engaged, they can select *The Chocolate War* if parents opt their kids into reading that book,” she said.

*The Chocolate War* is the story of a boy who is bullied because he refuses to participate in his school’s chocolate-selling fundraiser. Last year, it was assigned as required reading for a freshman course called “Living in a Contemporary World.” The 1974 book was used in a part of the course that dealt with bullying and stress.

The novel is among the top ten books receiving written requests that it be removed from public libraries and schools, according to the 2006 American Library Association list.

Last fall, about 40 parents, including Alicia Stewart, a parent from Forest Hill, complained about the book’s vulgar language and homophobic slurs. “Our 15-year-old daughter objected to the book,” she said. “We don’t let her watch R-rated movies, and we don’t talk like that. She felt that her moral upbringing was violated.”

Haas assembled a review committee of 15 teachers, administrators, students, parents and community members who reviewed the book. They recommended that *The Chocolate War* remain part of the course. In April, Haas removed the book from the curriculum and formed another committee, made up of seven Harford County school media specialists and teachers who read other books and compared them to *The Chocolate War*. The committee reviewed five books, and narrowed the choices for the freshman course to *The Chocolate War* and *Inventing Elliot*, a 2004 novel by Graham Gardner. Gardner’s novel is about a boy who, previously victimized by bullies, finds himself in the elite circle at his new school.

Harford County Board of Education President Thomas Fidler said he didn’t see any problems with using *The Chocolate War*. “I thought it reflected how adolescent children are brought up today,” he said. “The context, verbiage use, you can hear it twofold at the mall. Studying the book in a context of a professional learning environment, I didn’t have a problem with that.”

Fidler said either book was sufficient for the course, but he said *Inventing Elliot* didn’t have as “candid or colorful” language. Board member Lee Merrell disagreed, maintain-



ing that *The Chocolate War* should not be used at all. "It's a great way of showing everything that's wrong so you can talk about it," he said. "But when did we pick a textbook by which one has the most wrongness in it? I don't know why the committee recommended the book in the first place. "I sincerely hope no teacher decides to use it," he added. "If someone does do it, I hope every single parent in that class does not sign the form."

Board members had no authority over the matter, since the superintendent makes decisions on curriculum issues. Although the novel was discontinued from the freshman course, *The Chocolate War* was available to students at the schools' libraries. Reported in: *Baltimore Sun*, November 20.

### Grand Rapids, Michigan

A controversial textbook should remain in the Grand Rapids Public Schools—profanity and all—Superintendent Bernard Taylor has decided. The Board of Education will have the final say, but Taylor said October 12 that he would recommend members approve *The Literary Experience* for use in City High Advanced Placement English classes.

Other administrators said they were considering returning the anthology to its publisher or clipping out about 70 pages with objectionable material, including a drama, "Topdog/Underdog" by Suzan-Lori Parks, that contained profanity and descriptions of sexual activity.

"I do not want to mutilate books, and I do not want to return them," said Taylor, who was on vacation when the issue was discussed.

"'Topdog/Underdog' is a Pulitzer Prize winner, so there is obviously some literary value. It wasn't one of the assigned stories, so all the attention might motivate students to read beyond what they are required to read. Aren't we supposed to encourage that?"

Taylor said he might feel differently if the books were considered for districtwide use, rather than for a college-level elective for seniors. "I'm not going to fault people for being cautious, and if the board doesn't want to adopt the book, that's a decision the board gets to make," he said. "But I recommend we keep the book."

The anthology was selected by teacher Kathy VandeGevel from a list provided by the New York-based College Board, which creates guidelines for advanced placement classes. VandeGevel discovered the play after the books were bought and was concerned about the language and content. She sought direction from City High's principal, who deferred to central office staff.

The school board's Education Committee last week voted 2-1 to accept the books and send a letter to parents warning them about the content. But administrators continued to look at other options, including cutting about 70 pages from the 1,846-page books. The district purchased 140 of the \$60 books for use in four classes.

The full school board was expected to be split on the matter. Education Committee chairwoman Amy McGlynn, said she strongly opposes taking a razor to pages. But President Kenneth Hoskins said keeping the books could create unneeded controversy. Board member Harry Campbell said he will vote against the book, saying if the language couldn't be read aloud in public, then it shouldn't be placed in students' hands.

"The person who wrote that play, I think she needs her head examined," he said. "We don't need that in our school."

"Topdog/Underdog" revolves around two poor, inner-city brothers and their experiences with women, crime and racism. The 2002 drama uses the word "shit" and its variations more than 70 times along with 40 uses of the word "fuck."

But leaders of the National Coalition Against Censorship said there is a reason Parks selected those words. "Many of her plays, including "Topdog/Underdog," are primarily concerned with the African-American experience and the important issues created by differences in class and race," wrote Joan E. Bertin, the coalition's executive director, in a letter to Taylor. "The playwright's use of profanity is only one part of her powerful, raw and poetic literary style that depicts the world in which these themes are played out."

Administrators in 2005 pulled the book *Athletic Shorts*, by Chris Crutcher, from school library shelves after parents complained about language. Staff said the book was available last year only if requested but is back on the shelves now. Reported in: *Grand Rapids Press*, October 12.

## colleges and universities

### New York, New York

In one of the most publicly contested tenure cases of the year, Barnard College announced November 2 that it would promote Nadia Abu El-Haj, an anthropologist whose work on archaeology in Israel led to a major campaign against her.

A statement released by the college did not directly speak to the controversy that has raged around Abu El-Haj. "Like all tenured members of the Barnard faculty, Professor Abu El-Haj has successfully passed a highly rigorous review that involves both Barnard's own independent process and a university-wide review [at Columbia University] that reflects Barnard's partnership with Columbia and the participation of Barnard faculty in Columbia's graduate programs," the statement said.

"The tenure process includes extensive, confidential peer review by leading scholars in the candidate's field; clear documentation of teaching effectiveness; and a candidate's record of service to the institution and her profession. Tenure, together with the norms of academic freedom that pertain to all faculty, gives scholars the liberty to advance ideas, regardless of their political impact, so that their work

may be openly debated and play a critical role in shaping knowledge in the scholar's academic field."

The El-Haj case is among several involving scholars of the Middle East (generally seen as critics of Israel) that have set off national debates on their views and on academic freedom. Norman Finkelstein was denied tenure at DePaul University and after threatening to sue, reached a settlement with the university in September. Juan Cole, a professor at the University of Michigan, had departmental backing for a position teaching Middle Eastern history at Yale University, but ended up losing his bid for the job.

Opposition to Finkelstein, Cole and Abu El-Haj was part of the motivation for a new group of scholars to form last month to defend academic freedom and to call for an end to outside campaigns against scholars' work. At the same time, other scholars—among them those who have argued that most Middle Eastern studies scholars are too hostile to U.S. foreign policy and to Israel — to form a new group of their own last week.

While Finkelstein and Cole are among the more public of public intellectuals, jousting online and in person with their critics, Abu El-Haj has led a low profile, not commenting publicly on her case. Had her critics not mobilized against her tenure bid, most people outside of her immediate area of scholarship probably wouldn't have heard of her.

The controversy over Abu El-Haj focused on her book, *Facts on the Ground: Archaeological Practice and Territorial Self-Fashioning in Israeli Society*, published by the University of Chicago Press. The book was honored with an award by the Middle East Studies Association and Abu El-Haj's résumé features fellowships and other honors. The book deals with a topic that is sensitive politically to both Israelis and Palestinians: the evidence of the ancient Jewish presence in what is now Israel. The modern Israeli state has revered archaeology's role in establishing the historical Jewish roots in the region—which is important to Israelis in distinguishing themselves from colonial powers that took control of lands to which they were not connected.

In her book, Abu El-Haj writes critically of the way Israeli leaders have used archaeology to justify certain policies and views of their country. But the controversy over her book centers on the claims of some critics that she denies that there was a Jewish presence in the land. However, others who have read the book argue that Abu El-Haj's critics have distorted her words and that she does not contest the ancient Jewish presence in the region.

Many of those opposing the tenure bid identify themselves as Barnard alumnae, with some threatening never to donate to the college again. Many of those signing the petition on behalf of Abu El-Haj identify themselves as academics and say that freedom of intellectual thought has been endangered by the campaign against her. Abu El-Haj herself has been notably absent from the debate. When the Middle East Studies Association issued statements express-

ing concern about the academic freedom of some scholars whose work has been attacked, it approached her to ask if it should send letters to Barnard, and officials in the association report that she asked them not to do anything, and to let the regular process run its course.

Paula Stern, a blogger who was among the chief organizers of the anti-Abu El-Haj movement, blasted Barnard's decision and said it was a victory for anti-Semitism. She also linked the decision to a recent incident in which a Jewish professor at Teachers College of Columbia University found a swastika painted on her office door.

"The anti-Semites think they have won—and they are painting their glory across the campus with swastikas. . . . The battle, some would thus argue, is lost. But I would say we were victorious. We won because we made tens of thousands of people aware that Barnard and Columbia had lost their place in the halls of respect," wrote Stern. "El-Haj will teach at Barnard, but Barnard's students will not learn about truth. They will not learn about the facts on the ground, because the ground under El-Haj's world doesn't exist. Her dissertation consists of a poorly written diatribe, and her book, a bastardized version of the dissertation, has been further poisoned by intentional lies."

Richard Silverstein, a blogger who has been publishing criticisms of the attacks on Abu El-Haj, predicted that there would be more such fights. He wrote: "Campus Watch, Front Page Magazine, the David Project and their allies among Barnard alumni who campaigned against Abu El-Haj have lost this round. I say round because to them this clearly is a never-ending ideological war. . . . No doubt they will be trolling for the next Abu El Haj to whom they can take an ax. But the good news is that they have been stopped here. Academia finally said to them: here and no farther." Reported in: [insidehighered.com](http://insidehighered.com), November 5.

## art

### New York, New York

A life-size chocolate sculpture of a naked Jesus was finally displayed in New York starting in late October, seven months after an outcry by Roman Catholics forced a different gallery to cancel its exhibition. The chocolate Jesus was joined by sculptures of several fully clothed saints, but the Catholic League for Religious and Civil Rights said it would not protest because, unlike before, there are no plans to put the "anatomically correct" Jesus in public view during Holy Week.

The Proposition gallery in Manhattan's Chelsea neighborhood presented "Chocolate Saints . . . Sweet Jesus," an exhibition timed to coincide with All Saints' Day on November 1.

Back in March, the chocolate Jesus by artist Cosimo Cavallaro was to be exhibited in a street-level window of the Roger Smith Lab Gallery in Midtown Manhattan,

giving casual passers-by a view of Jesus's private parts. Protests, including a call to boycott the affiliated Roger Smith Hotel, forced the gallery to scrap the showing.

"We still don't approve but the conditions have changed," said Kiera McCaffrey, spokeswoman for the Catholic organization. The new exhibition was held indoors in a neighborhood full of art galleries, she said.

A gallery statement said Cavallaro was raised as a Catholic altar boy and questioned church precepts but always held a fondness for Holy Communion. "Remembering the mystical/transcendental quality and rushes of memory associated with the Catholic wafer received during Holy Communion, he recalls equating that ritual of ecstasy to his own experience of chocolate," the statement said.

The flap recalled another New York clash between art and religion. In 1999, then-Mayor Rudolph Giuliani tried to withdraw a grant from the

Brooklyn Museum of Art over a painting depicting the Virgin Mary as a black woman splattered with elephant dung and adorned with cut-outs from pornographic magazines. Reported in: Reuters, October 17. □

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*(is it legal . . . from page 24)*

about the DOD's "own ministry." In fact, the report says, Benson was determined to use the video to "attract new supporters" to the Christian Embassy, an evangelical organization that evangelizes members of the military and politicians in Washington, DC, via daily Bible studies and outreach events. The group holds prayer breakfasts on Wednesdays in the Pentagon's executive dining room, according to the organization's Web site. Bill Bright, the founder of Campus Crusade for Christ, founded the Christian Embassy 30 years ago.

Another fundamentalist group, Military Missions Network, says its mission is to build "an expanding global network of kingdom minded movements of evangelism and discipleship reaching the world through the military of the world." On its Web site, the group has posted a 40-page instruction manual for winning over so-called "pre-Christians" to evangelical Christianity.

"As you begin to launch a movement on a base, ship or post, it is evangelism that will make the difference between a maintenance ministry and a thriving movement- like you see in the Book of Acts," the group says in the "Unstoppable Evangelism" section of its manual. "Military men, women and their families are barraged daily with messages from a secular world view. To counter this, we must use every appropriate means to communicate a Christian world view."

The instruction manual also says that soldiers are more vulnerable in stressful situations and that Military Missions Network members can tap into that vulnerability to prosely-

tize and perhaps convince soldiers to embrace Christianity.

"Of course, you should recognize as well that some environments and situations (i.e. basic training, stressful TDYs, threats of violence) create a very receptive audience," the manual says. Additionally, the manual suggests evangelizers become familiar with what makes their "targets tick."

"We need to ask as a team 'Who is it exactly that we are trying to reach?' Cadets, enlisted, officers, singles, marrieds, senior NCOs [non-commissioned officers], senior officers, retirees? Army, Navy, Air Force? Internationals? No doubt, other categories for our audiences exist. Take the time to define them. Once you know the target, you'll be able to begin to design your approach to reach them. Become as Paul was 'all things to all' (1 Corinthians 9:22). As you define your target more clearly, take the time to get to know a few of them! Mark Mittelberg says: 'Find out what makes them tick. What are their questions? What interests them? What do they wrestle with? Get to know their background. Learn their language-find out what words and concepts connect with them and which ones make their eyes glaze over. Then speak to them in their own language.'"

Military Missions Network and Military Ministry count current and former high-level personnel from all four branches of the military as board members and use their relationships with base commanders to gain access to soldiers, according to documents from both groups.

Mikey Weinstein, the founder and president of the Military Religious Freedom Foundation, said the new evidence that has surfaced proves proselytizing among military bases is not an isolated issue, which some of his critics have charged.

"Today is a tragically dark day of infamy for the Constitutional religious liberties of the guardians of the American Dream: the United States armed forces," Weinstein said in an interview. "Today, the Military Religious Freedom Foundation is publicly releasing incontrovertible and comprehensive evidence of a profoundly unconstitutional and previously undetected alliance between fundamentalist Christian churches, parachurch organizations and the most intricate machinery of the American military. We are resolute and determined to present this compelling volume of evidence before the Judge in our current Federal litigation in Kansas City. It is our fervent hope that its shocking impact will formidably buttress the likelihood of a favorable legal victory to stem the engulfing tide of the Department of Defense's pernicious pattern and practice of Constitutional rape of the religious freedoms of our honorable and noble sailors, soldiers, marines, airmen and veterans."

Since Weinstein started his foundation more than two years ago, he has been contacted by more than 6,000 soldiers from all over the world who said they were being pressured to embrace some form of fundamental Christianity.

In September, the Military Religious Freedom

Foundation filed a lawsuit in federal court against Secretary of Defense Robert Gates, and U.S. Army major Freddy Welborn, on behalf of an Army soldier stationed in Iraq. The complaint filed in U.S. District Court in Kansas City on behalf of the Military Religious Freedom Foundation for Jeremy Hall, an Army specialist currently on active duty in Combat Operations Base Speicher, Iraq, alleges Hall's First Amendment rights were violated when Welborn threatened to retaliate against Hall and block his reenlistment in the Army because of Hall's atheist beliefs. Reported in: [truthout.com](http://truthout.com), October 8.

## free expression

### New York, New York

Two cases pending in federal court in Manhattan will soon test how far the government can go in keeping Americans safe from what a State Department manual calls the “irresponsible expressions of opinion by prominent aliens.”

One case concerns a decision by the Bush administration to bar a Muslim scholar from visiting the United States. The other is a criminal prosecution of two Brooklyn businessmen for transmitting Hezbollah's television station on their satellite service.

The government's actions in these cases are reminiscent, civil liberties groups say, of another era. For about four decades that coincided roughly with the cold war, the United States routinely barred intellectuals and literary figures from visiting here based on their political views. Graham Greene, Gabriel García Márquez and Doris Lessing were all excluded. But in largely repealing the law on ideological exclusion in 1990, Congress seemed to suggest that Americans could be trusted to make decisions about such individuals for themselves.

The spirit of the old law, the McCarran-Walter Act, was revived after the September 11 attacks. The USA Patriot Act of 2001, for instance, allowed the government to deny visas to people who had used their “position of prominence within any country to endorse or espouse terrorist activity.”

The government invoked that law in 2004 when it denied a work visa to Tariq Ramadan, a Swiss philosopher and Muslim intellectual. As a consequence, Professor Ramadan had to give up a teaching appointment at, in the words of *The Guardian* newspaper, “that hotbed of Muslim extremism, the University of Notre Dame in Indiana.”

In the three years preceding the denial, Professor Ramadan had visited the United States 24 times, lecturing at Dartmouth, Harvard and Princeton—and the State Department.

Three academic and literary groups sued the government last year over the denial, saying they had a First Amendment right to hear from Professor Ramadan. “There

is something so dangerous in keeping writers out of the country because they don't support the government,” said Francine Prose, the president of the PEN American Center, one of the plaintiffs. “Tariq Ramadan is the voice of reason, of logic, of toleration and common sense.”

After the suit was filed, the government changed its rationale for excluding Professor Ramadan, now saying that he had contributed about \$1,300 to a charity in Switzerland from 1998 to 2002. That charity, later designated a terrorist organization by the Treasury Department, in turn made contributions to Hamas, which had already been designated one. Professor Ramadan's second-hand contribution amounted to material support for terrorism, the government said.

Excluding Professor Ramadan “in no way restricts speech,” government lawyers wrote in a brief in the case in May. He remains free to say what he likes, they continued, and Americans remain free to hear what he has to say. Just not in person in the United States.

Judge Paul A. Crotty—a federal district judge in Manhattan who was New York City's chief lawyer under Mayor Rudolph W. Giuliani—held a hearing in the case October 18. In an earlier decision, he said the principles at stake were crucial ones.

“The First Amendment includes not only a right to speak, but also a right to receive information and ideas,” Judge Crotty wrote last year. That includes a right, he continued, quoting a Supreme Court decision, “to have an alien enter and to hear him explain and seek to defend his views.”

Lawyers for the defendants in the television case, Javed Iqbal and Saleh Elahwal, say the case against them, similarly, is “nothing less than a full frontal assault on the fundamental values inscribed in the First Amendment.” The men are charged with providing material support to Hezbollah, the radical Islamic Shiite group in Lebanon, by making its television station, Al Manar, available in the United States.

In a brief filed in July, the government said, in an echo of the Ramadan case, that the satellite case was only about business dealings and “has nothing to do with speech, expression or advocacy,” adding that “the defendants remain free to speak out in favor of Hezbollah and its political objectives.” But they may not transmit Al Manar's message.

Defense lawyers noted that Fox News and CNN had also broadcast material from Al Manar.

“There is a vast difference,” the government responded, “between airing excerpts of footage from Al Manar to illustrate a news event and providing equipment and facilities which allow for the uninterrupted transmission of Al Manar's broadcasts.” Fox News, moreover, “did not fully broadcast the audio” and “talked over the video.” Reported in: *New York Times*, October 22.



## Internet

### San Francisco, California

A coalition of consumer groups and legal scholars has formally asked the Federal Communications Commission to stop Comcast Corp. from interfering with file sharing by its Internet subscribers. Two of the groups also are asking the FCC to fine Comcast \$195,000 for every affected subscriber.

The petitions will be the first real test of the FCC's stance on "Net Neutrality," the principle that Internet traffic be treated equally by carriers. The agency has a policy supporting the concept but its position hasn't been tested in a real-world case.

Comcast Corp. actively interferes with attempts by some of its high-speed Internet subscribers to share files online, a move that runs counter to the tradition of treating all types of Net traffic equally.

The interference, which The Associated Press confirmed through nationwide tests, is the most drastic example yet of data discrimination by a U.S. Internet service provider. It involves company computers masquerading as those of its users.

If widely applied by other ISPs, the technology Comcast is using would be a crippling blow to the BitTorrent, eDonkey and Gnutella file-sharing networks. While these are mainly known as sources of copyright music, software and movies, BitTorrent in particular is emerging as a legitimate tool for quickly disseminating legal content.

The principle of equal treatment of traffic, called "Net Neutrality" by proponents, is not enshrined in law but supported by some regulations. Most of the debate around the issue has centered on tentative plans, now postponed, by large Internet carriers to offer preferential treatment of traffic from certain content providers for a fee.

Comcast's interference, on the other hand, appears to be an aggressive way of managing its network to keep file-sharing traffic from swallowing too much bandwidth and affecting the Internet speeds of other subscribers.

Comcast, the nation's largest cable TV operator and No. 2 Internet provider, would not specifically address the practice, but spokesman Charlie Douglas confirmed that it uses sophisticated methods to keep Net connections running smoothly. "Comcast does not block access to any applications, including BitTorrent," he said.

Douglas would not specify what the company means by "access"—Comcast subscribers can download BitTorrent files without hindrance. Only uploads of complete files are blocked or delayed by the company, as indicated by AP tests.

But with "peer-to-peer" technology, users exchange files with each other, and one person's upload is another's download. That means Comcast's blocking of certain uploads has repercussions in the global network of file sharers.

Comcast's technology kicks in, though not consistently, when one BitTorrent user attempts to share a complete file

with another user. Each PC gets a message invisible to the user that looks like it comes from the other computer, telling it to stop communicating. But neither message originated from the other computer—it comes from Comcast. If it were a telephone conversation, it would be like the operator breaking into the conversation, telling each talker in the voice of the other: "Sorry, I have to hang up. Good bye."

Matthew Elvey, a Comcast subscriber in the San Francisco area who has noticed BitTorrent uploads being stifled, acknowledged that the company has the right to manage its network, but disapproves of the method, saying it appears to be deceptive. "There's the wrong way of going about that and the right way," said Elvey, who is a computer consultant.

Comcast's interference affects all types of content, meaning that, for instance, an independent movie producer who wanted to distribute his work using BitTorrent and his Comcast connection could find that difficult or impossible—as would someone pirating music.

Internet service providers have long complained about the vast amounts of traffic generated by a small number of subscribers who are avid users of file-sharing programs. Peer-to-peer applications account for between 50 percent and 90 percent of overall Internet traffic, according to a survey this year by ipoque GmbH, a German vendor of traffic-management equipment.

"We have a responsibility to manage our network to ensure all our customers have the best broadband experience possible," Douglas said. "This means we use the latest technologies to manage our network to provide a quality experience for all Comcast subscribers."

The practice of managing the flow of Internet data is known as "traffic shaping," and is already widespread among Internet service providers. It usually involves slowing down some forms of traffic, like file-sharing, while giving others priority. Other ISPs have attempted to block some file-sharing application by so-called "port filtering," but that method is easily circumvented and now largely ineffective.

Comcast's approach to traffic shaping is different because of the drastic effect it has on one type of traffic—in some cases blocking it rather than slowing it down—and the method used, which is difficult to circumvent and involves the company falsifying network traffic. Reported in: [thestate.com](http://thestate.com), November 1; [msnbc.com](http://msnbc.com), October 19.

### Washington, D.C.

Two consumer advocacy groups have asked the Federal Trade Commission to investigate whether new advertising initiatives announced by social networking sites MySpace and Facebook adequately protect consumer privacy.

In a November 12 letter to FTC Chairman Deborah Platt Majoras, the Center for Digital Democracy and the U.S. Public Interest Research Group claimed that the "ambitious new targeted advertising schemes" launched by MySpace.com and Facebook, Inc., "make clear the advertising indus-

try's intentions to move full-speed ahead without regard to ensuring consumers are protected."

Jeffrey Chester, founder and executive director of the Center for Digital Democracy, said that by launching the advertising plans, MySpace and Facebook are "thumbing their noses at the FTC and consumer privacy rights" by allowing marketers to customize advertisements based on data provided by users in their profiles on the social networking sites.

"MySpace and Facebook are like the digital data equivalent of Fort Knox for Madison Avenue marketers," he said. "It is a kind of one-stop data shop for marketers. They know your interests, your politics and what movies you like. It is a much more rich array of content that marketers simply should not have automatic access to."

Chester said consumers must be offered a complete opt-out option, and the social networks must fully disclose how they intend to use their personal information.

The letter goes on to note that since both MySpace and Facebook are working with fast-food advertisers, the FTC should include their plans in its ongoing review of advertisements that may promote obesity among youths.

Several attorneys and privacy advocates questioned whether it is legal for the social networks to tell a user's friends about his or her purchases or likes without the user's written consent.

In a statement, MySpace said it is "firmly committed to protecting user privacy and adher[ing] to a strict policy." In addition, MySpace noted that by the end of this year, users will be able to opt out of MySpace programs that use their preferences to help advertisers create customized ads.

"Our ad targeting platform is designed to work with user-expressed information from profile pages to create a more-relevant advertising experience," the statement said. "Users who are not interested in participating will have the ability to 'opt out' of the targeting platform."

The letter was a follow-up to a report the two groups sent to the FTC in early November urging it to launch an investigation into new threats to privacy from the behavioral targeting and profiling of users—especially youth—by social networks and other online sites. Reported in: *Computerworld*, November 13.

## libel

### Irvine, California

A professor at the University of California at Irvine asked a California court in October to dismiss a lawsuit against him, brought by a prominent South Korean researcher, who accused the American of defamation over statements he made this year in a commentary in a medical newspaper.

In late August, Kwang Y. Cha, a fertility specialist, filed suit in California Superior Court against Bruce L. Flamm,

an obstetrician-gynecologist and a volunteer clinical professor at Irvine. The case involved statements made last March by Dr. Flamm in a commentary in *OB-GYN News* regarding a controversial 2001 study about the medical power of prayer.

In that 2001 paper, Dr. Cha and two co-authors reported that when women in America, Canada, and Australia prayed for patients in South Korea undergoing in vitro fertilization, the patients' chances of getting pregnant went up, even though they were unaware of the prayers.

The study attracted considerable criticism, including from Dr. Flamm, who denounced the research in his own articles and interviews.

In the commentary last March, Dr. Flamm described the turbulent history of the prayer study since it was published. One author, Daniel P. Wirth, a lawyer, pleaded guilty in 2004 to conspiring to commit mail and bank fraud. Later that year, the lead author, Rogerio A. Lobo, a professor of obstetrics and gynecology at Columbia University, took his name off the paper, saying that he did not know about the research until after it had occurred and that he provided "only stylistic guidance and editorial review."

Dr. Cha, who had been a researcher at Columbia at the time of the 2001 paper, is a renowned doctor in South Korea, and his company Cha Medical Group owns several hospitals and medical centers in South Korea and the United States. Earlier this year, articles reported that another study by Dr. Cha was the subject of controversy. The editor of the journal *Fertility and Sterility* said that Dr. Cha and his co-authors had committed plagiarism in a paper they published in the journal in 2005. The paper was identical to one published in a South Korean journal in January 2004, according to the news reports.

Those reports spurred Dr. Flamm to write in his March commentary that "this may be the first time in history that all three authors of a randomized, controlled study have been found guilty of fraud, deception, and/or plagiarism."

Dr. Cha's complaint alleges that Dr. Flamm has "conducted a bitter personal vendetta" against him and that Dr. Flamm made a statement that was "false, defamatory, and made with malice" when he asserted that Dr. Cha had been "found guilty of fraud, deception, and/or plagiarism." The commentary incorrectly implies that Dr. Cha had been found guilty by a court or professional body, according to the suit.

Dr. Flamm's lawyer, Brian W. Birnie, filed a motion to dismiss Dr. Cha's suit under the provisions of a California statute designed to protect against SLAPP's, or "strategic lawsuits against public participation." The law was meant to thwart lawsuits intended only to harass people who were airing legitimate public criticism of a would-be plaintiff. The suit by Dr. Cha is subject to the anti-SLAPP statute because the statements in question concern a matter of public interest and were made in a public forum.

Dr. Flamm's motion states that Dr. Cha's lawsuit is "simply an attempt to quell dissent regarding his work and

to stamp out critical scrutiny of his scientific techniques and professional integrity.” Birnie also said Dr. Flamm’s commentary was protected speech under the First Amendment of the U.S. Constitution. When taken in the context of the entire article, the comments are not malicious or inflammatory, according to Dr. Flamm’s motion.

Barbara Mishkin, a lawyer in Washington who specializes in matters of scientific research, agreed with Dr. Cha’s contention that he had not been found guilty. “He’s been charged with plagiarism,” she said. “That’s a first step, but it’s not a finding of guilt.”

Mark S. Frankel, who directs the Scientific Freedom, Responsibility, and Law Program at the American Association for the Advancement of Science, said the defamation suit would be hard to prove because the plagiarism case against Dr. Cha was spelled out in the newspapers. Reported in: *Chronicle of Higher Education* online, October 24. □

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(*copyright datelines . . . from page 14*)

When informed of the book’s content, the library media specialist who bought it thought she had made a mistake, so she removed the book, Gosnell said.

*The Misfits*, also by James Howe, which is a companion book to *Totally Joe*, is stocked at two middle school libraries, in Bedford and Staunton River middle schools, Gosnell said. However, the two banned books were found only at the original schools from which they were removed, he said.

“We haven’t made a big issue of either of these because upon examination, we concurred with the issues that were brought up by the parents and just simply removed them from the collection,” Gosnell said.

Currently, when a book or other library material is challenged, the school board has a policy that outlines a procedure for how to file a complaint. “The complaint should be filed in writing,” the policy states, and then a review committee of the principal, the library media specialist, a parent and/or student and the complainant will convene to read and discuss the material. The group then makes a recommendation on whether to withdraw the material. The complainant could appeal that decision to the superintendent, and then to the school board. During the process, the challenged book is temporarily removed, Gosnell said.

He said the policy did not apply in the two recent cases because both removed books were “erroneously” purchased. In both cases, the decision to remove the books was a collaboration between himself, the school principal and the library media specialist, he said.

*The Making of Dr. Truelove* was read by all three before it was removed, he said. *Totally Joe* was not.

“It’s just a standard operating procedure in that the library media specialist is the one that makes the initial selection (of books),” Gosnell said. “If in her professional opinion, there was a book placed erroneously, that the book

was less than appropriate for the educational setting that she serves, she does have the right to remove that—that would be considered a part of the normal weeding process.”

If anyone would have objected to the removal of the book, Superintendent James Blevins said, then the complaint would have faced a formal procedure for removal.

Book challenges, even informal ones, such as the most recent cases, are typically “very infrequent” in Bedford County schools, Gosnell said. He isn’t aware of any other challenges in the past five years, he said. Reported in: *Lynchburg News & Advance*, October 28.

### Washington County, Virginia

Lee Smith doesn’t remember what she was doing when a friend phoned her to tell her the Washington County School Board was considering banning her popular novel *Fair and Tender Ladies* because of a few “crude” words deemed too graphic for teenage honor students.

“I was sorry to hear it,” Smith said. “This book is the book of my heart. It is a love story to southwest Virginia. It memorializes and documents an earlier way of life.”

The Grundy, Virginia, native said the book pays homage to a special group of people as well. “It’s for the older Appalachian women I was privileged to know as I was growing up,” said Smith, the author of eleven works of fiction.

She didn’t really fault the school board members for their decision to have a committee review the book, which follows a young Appalachian girl named Ivy Rowe as she copes with many hardships of life in the mountains many years ago. But she certainly didn’t applaud their action. “On the other hand, I didn’t write it specifically for young adults,” she said.

A short passage in the novel deals with Ivy Rowe’s first sexual experience and one school board member agreed with others who objected to the descriptive language used. “But, things have changed since I wrote it,” Smith said of the book published almost ten years ago.

Kids today can log onto the Internet and find more shocking things in three seconds, she said. The same goes for cable television, she added.

“I think books like ‘Fair and Tender Ladies’ address issues that teenagers are already dealing with these days,” Smith said. The book provides teens with a safe forum to address issues such as unwanted pregnancy and other topics, she added. The novel also demonstrates the necessity of a good education and highlights the importance of the region’s heritage.

If the school board eventually bans the book, it is Smith’s hope teenagers will read it anyway. “I hope they pick it up so they will know how hard their grandparents had it,” she said.

Ivy Rowe, the novel’s voice, is almost universally viewed as an endearing character who stays with the reader long after the last page is turned. It’s the same for Smith.

“I’m happy to have met her, too,” she said. “She is such a strong, spunky girl.” Reported in: *Bristol Herald-Courier*, November 29.

## **schools**

### **Gilbert, Arizona**

A Williams Field High School teacher who was suspended for performing a cheerleading routine in class that was posted on YouTube is in hot water again. Cristina Mallon, who was returned to her teaching duties by the Higley Unified School District, was the focus of a new controversy after complaints were made October 24 about a novel that she assigned to her freshman English students.

According to Ken Bryden, 59, and his son Cory, 18, Mallon chose *Jake Reinvented*, by Gordon Korman, for the class. The Brydens told the Higley governing board that they think the book is inappropriate for freshmen, based on reviews saying that there are themes of teen drinking, sex and violence. Ken Bryden’s daughter, Hailey, 14, is in Mallon’s class but was not present at the board meeting.

“We just want to make sure the school board knows what’s going on in the school,” said Cory Bryden, who is not enrolled at Williams. “The book has been deemed inappropriate. Maybe it’s for juniors or seniors, but it’s not for freshmen.”

Joyce Lutrey, the district’s superintendent, offered to meet with the Brydens. Assistant superintendent Lynn Weed, who oversees curriculum for the district, said she would take up the matter. “I will look into that curriculum situation as soon as possible, you bet,” Weed said. “Our policy says that our materials and curriculum (must be) board-adopted.”

A letter to parents on Williams Field stationery, dated October 2 and bearing Mallon’s signature, pledges to make accommodation for students whose parents object to the book.

The YouTube video, which captured Mallon, the school’s cheerleading coach, performing a seemingly innocuous cheer at the front of a classroom as students hooted and cheered, received national media attention. Reported in: *Arizona Republic*, October 25.

### **Winchester, Kentucky**

Concerned parents of Conkwright Middle students and local Christian leaders appeared before the school’s site-based decision-making council October 11 protesting the use of a book they say goes against their beliefs. But teachers and parents who reviewed the book, Philip Pullman’s *The Golden Compass*, say it is suitable for middle school students, who understand it’s a fantasy novel.

“We want more than anything for kids to be interested in reading,” said language arts teacher Susan Mitmesser, who

presented the review committee’s findings. “And when they find something they like to read, we get excited about it.”

“We believe that there are problems with the book, and other books that Philip Pullman, who is a noted atheist in England, has written,” said Lee Cruse, senior pastor at Grace Bible Church and former Fannie Bush Elementary principal. “And I feel he has an ulterior motive.”

Those who addressed the board—Cruse, parent Michael Gilbert, and Tom Hall, pastor of Church of the Living God—opposed the use of the word “daemon” in the book, which refers to the animal spirits that accompany characters through Pullman’s novel. They say the film’s Web site pronounces the word “demon,” and invites children to “meet your daemon.”

Those opposed also say that the main character drinks wine and ingests poppy with her meals, and they argue that the book presents an anti-Christian doctrine.

A committee of Conkwright parents and teachers, formed by Wright, read the book and reviewed the citizens’ written concerns. The committee determined that a “daemon” from Greek mythology is not the same thing as the Christian concept of a “demon.”

The committee interviewed seven students at random, and none “knew of the church’s involvement with the novel.” They suggested they wouldn’t become violent after reading the novel. The committee recommended keeping the book as part of the curriculum.

Cruse said the ultimate goal of those opposed is to see that the book is removed from the school’s curriculum entirely. He said it’s up to the school to decide what to do, but he doesn’t envision a compromise.

“We are trying to work with the school,” he said. “We are at the place right now where we’re waiting to see their decision.”

On October 9 the Catholic League, a Roman Catholic anti-defamation group, launched a two-month nationwide protest of the book’s forthcoming film version, which was released December 7. The group says the film, and the trilogy of books that starts with *The Golden Compass*, criticizes Christianity.

Mitmesser said she also teaches *The Lion, the Witch and the Wardrobe*, a Christian allegorical fantasy by C.S. Lewis, and is concerned about the precedent censorship could set at Conkwright. “I don’t want to get into a situation where I have to stop teaching that novel,” she said. “(With) censorship, especially in a public school, we have to be very careful because there are going to be some people who do not want me to bring that allegory into the classroom.” Reported in: *Winchester Sun*, October 17.

### **Wakefield, Massachusetts**

The summer reading feats of Lynne Bimmmler’s sixth-grade class are proudly chronicled on the St. Joseph’s School Web site. “The sixth grade reads an average of 7.5 books each



with many students in double digits,” says a note on the class page. “Of course, Harry Potter was a popular choice.”

But in September students found that their favorite series had “disappeared” from the school library, after St. Joseph’s pastor, the Rev. Ron Barker, removed the books, declaring that the themes of witchcraft and sorcery were inappropriate for a Catholic school.

“He said that he thought most children were strong enough to resist the temptation,” said one mother who asked that her name not be used because she did not want her family to be singled out. “But he said it’s his job to protect the weak and the strong.”

The removal at St. Joseph’s was the first reported instance that the wildly popular series has been banned in the Bay State, according to the American Library Association. But British author J.K. Rowling’s series, which many educators credit with inspiring a generation of children to pick up a book, has been as controversial as it has been popular. Groups in at least 17 other states have tried to ban the books since the first one was published in 1998, prompting the library association in 2006 to name the Harry Potter collection “the most challenged books of the 21st century.”

The decision has angered some parents at St. Joseph’s. “I’m upset it was done in the first place, and I’m upset it was done without talking to anyone about it,” said Rick Hudson, who has sent all three of his children to the school.

But not everyone was against the banning. “I think the spirit of what he’s doing is the right thing,” said a mother who asked that her name not be used. “I believe he is sincerely interested in the children’s well-being.”

The Catholic Church has no formal policy on the books. Last summer, the U.S. Conference of Catholic Bishops rated the most recent movie, “Harry Potter and the Order of the Phoenix,” appropriate for adults and adolescents. Reported in: *Boston Globe*, October 25.

### Westhampton Beach, New York

A tiny Westhampton Beach bookstore has become the frontline in a battle over the written word. Terry Lucas, owner of The Open Book on Main Street, has fortified her shop with handmade signs, the protests spelled out in glittery letters.

“We have fREADom,” one poster reads. “Reading=good. Censorship=bad,” another sparkles. The decorations, made by local students, were in response to an effort by several parents to remove two books from Westhampton Beach High School’s ninth-grade reading list over what the parents say is inappropriate sexual content.

*The Tenth Circle*, by Jodi Picoult, and *Cradle and All*, by James Patterson, currently sit on the list of more than 300 books from which ninth-graders must choose to read for course credit. But a group of parents, led by Georgia Joyce, of Remsenburg, filed a complaint with the district over the

two books, said Westhampton Beach Superintendent Lynn Schwartz.

The issue ballooned into a controversy pitting neighbors against one another to a degree not seen in the community in years, district officials said. Schwartz said the district created a committee to review the two books and make a recommendation as to whether they should remain on the ninth-grade list.

“The issue as we see it is not taking anything out of the library,” he said. “The core of this issue is whether these two pieces of work are age-appropriate and belong on the list. I don’t see this as a censorship issue.”

But over at the bookstore, Lucas disagrees. “Nobody likes the censorship word, but if you’re removing books because of content, I think it’s censorship, just pure and simple,” she said.

The controversy came on the heels of similar complaints from parents at nearby Commack High School in June about a book on that school’s summer-reading list, *The Perks of Being a Wallflower*, by Stephen Chbosky. Commack school officials planned to review the list.

On November 17, Lucas held a three-hour “read-in” protest at her store. Nearly 100 people wrote letters, read aloud from books that had been banned by other districts in the past, and ate pizza.

Susan Kosinski, whose son attends ninth grade at Westhampton Beach High School, said she and her son read several of Patterson’s novels together, but not *Cradle and All* because it was checked out of the library. “Most of the books on the list deal with adult topics,” Kosinski said. “I think they open a door for us to speak with our children about things that may not come up or that might be hard to talk about with them.”

*Cradle and All* deals with virgin birth and contains a scene of a girl having sex with a series of men.

Author Picoult, whose novel focuses on date rape, said there have been attempts elsewhere to ban her book. “It’s tragic to inhibit the expression of ideas and people’s right to hear them,” said Picoult, whose latest novel, *Nineteen Minutes*, was stricken from a reading list at her son’s high school in Hanover, N.H. “I think that’s what this country was founded on. That’s why banning a book continues to be a very powerful issue.”

The ninth-grade self-select reading list at Westhampton Beach High School contains books that don’t shy away from difficult subjects. The 300-plus book list includes titles that tackle such issues as date rape, self-mutilation, virgin birth, parent arrest, lesbians, drugs, and occult murder, according to the district’s synopsis of each title.

In addition to classics such as *Little Women*, and best-sellers like *Memoirs of a Geisha*, the list also includes eight titles on the American Library Association’s list of the 100 “most frequently challenged” books of 1990–2000. Westhampton Beach’s list was created by the school’s English teachers and librarians, and is continually updated,

Superintendent Lynn Schwartz said. Students, too, can make recommendations to teachers or librarians. The parents' complaint about *The Tenth Circle* and *Cradle and All* was the first the district has gotten about the list, he said. Reported in: *Newsday*, November 23.

### **Liberty Township, Ohio**

A widely performed school play was canceled by Lakota East High School officials after a meeting with a local NAACP official. The internationally acclaimed play—Agatha Christie's "Ten Little Indians"—was to be performed by students the following weekend.

But Gary Hines, president of the local NAACP branch, complained to Lakota officials that the play, based on Christie's 1939 mystery novel, was inappropriate for a school production. Hines said the book's original title and cover illustration used for its initial publication in England was a racial slur toward blacks and included a cover illustration of a black person and a hangman's noose.

"The original title was 'Ten Little (N - - - - -),' and it is important to say that because that was the actual title," Hines said.

The title of the international bestseller was widely changed after 1939, and school theater productions in America have performed the murder mystery play as either "Ten Little Indians" or "And Then There Were None," another title under which both the play and the novel has appeared, for decades since.

Hines claimed that a lack of racial diversity among Lakota's students and teachers allowed the play to be chosen despite the history surrounding its original title. "It's a lack of diversity knowledge on their part. Diversity is not a way of life in Lakota," Hines said.

But Hines, who operates GPH Consultants—a diversity training company—in West Chester Township, said that despite his strong protest, it was Lakota officials' idea to cancel the play in response to his complaints.

Jon Weidlich, spokesman for Butler County school district, said subsequent discussions—after district officials met with Hines - among students and staff at Lakota East High School led to the decision to cancel the play.

"After learning of the play's origins and the hurt that it caused, we had hoped to use the performances as a way to create a discussion about diversity of all kinds in our community. However, students and staff continued to raise issues, and it was quickly obvious that bad feelings about the play were much more widespread and strong than originally thought. The best action seemed to be to switch to a different play," Weidlich said.

Keith Kline, Lakota East principal, said: "Certainly, it was a tough decision but one that needed to be made. Doing the play now is not a way to promote the respectfulness we are trying to promote."

But Joan Powell, president of the Lakota Board of

Education, criticized Hines, whose local chapter of the National Association for the Advancement of Colored People includes Liberty and West Chester townships, Hamilton and Fairfield. Powell said Hines has a history of making racial accusations against Lakota schools with his personal financial interests sometimes coming into play.

In 2002, Hines accused Lakota schools of widespread, systemic racism and recommended that more than 2,000 Lakota employees be required to enroll in diversity and cultural sensitivity training similar to what was offered by his company. He promised to compile a report months later detailing his accusations against the schools but never produced a document.

Hines, however, has continued to allege racism in the school district. In a November 20 e-mail to Powell and other Lakota school board members, he wrote: "Given the history of the district, anything short of involving the NAACP in planning, developing, and executing a systemic approach to diversity is not acceptable and certainly not good enough for the district's students, faculty, and staff."

Powell countered that "Gary Hines has a certain vested interest in district's diversity since he has approached us many times in the past about providing that service."

She disagreed with the administration's decision to cancel the play. "I'm concerned about censorship, and I'm concerned about the message it sends to other student productions that we are now in the business of censorship," Powell said.

Lakota East senior Luke Null, who had rehearsed since September to perform as one of the lead characters, said "pressure from the local NAACP canceled the play."

"I read the play as part of a class in the ninth grade. There are no racial undertones in it at all, and we weren't putting on the play under its original name from 1939. We were putting on the play under another name," Null said. He and other theater students are now scrambling to find another play to perform some time early in 2008.

"Some of our First Amendment rights were censored. The race card is a pretty strong card," he said. Reported in: *Cincinnati Enquirer*, November 27.

### **Cumberland, Rhode Island**

A high school reading assignment that contains profanity and references to bestiality angered a Cumberland parent so much that she complained to the superintendent, the School Committee and the state Department of Education. She wants the essay removed from the curriculum and the teacher disciplined.

So far, that hasn't happened. Will Clarke, the author of the offending eight-page essay, "How to Kill a Boy That No One Liked," doesn't see what the fuss is all about.

Clarke, who has two novels published by Simon & Schuster, *The Worthy: A Ghost's Story* (2006) and *Lord Vishnu's Love Handles: A Spy Novel (Sort of)* (2005),

said the essay is about his own high school experience in Shreveport, Louisiana, where he was a loner who was constantly picked on until he reinvented himself.

“It’s about a pivotal point in my high school experience when I won an election and stopped being a loser in people’s eyes,” the Dallas-based author said in a telephone interview. “If anything, the essay is redemptive. That’s what literature does. It gets people to try on another person’s skin and see what it’s like,” he said. “It’s totally appropriate for high school kids.”

Lori Drew first saw the essay when her 15-year-old daughter, Amanda, a freshman at Cumberland High, brought it home as part of a homework assignment for a reading class. The assignment was to read the essay and come up with as many questions as possible.

“I was shocked with the profanity and explicit sex acts with animals,” she told the School Committee last week as she handed out copies of the essay to members of the audience and the committee.

Superintendent of Schools Donna Morelle agreed to let Amanda opt out of the assignment and left Drew with the impression that the essay itself would be pulled. But the assignment was never eliminated. The superintendent could not be reached to explain the apparent misunderstanding.

“She lied to me,” Drew said after the meeting. “I want it out of the school, and I want the School Department to admit that it was wrong. If it had been a student who said those words, they would have been punished. I want the same level of accountability from this teacher.”

Chair Frederic C. Crowley said later that he thinks the parent’s concerns about the essay are valid but he still stands by Morelle’s decision not to pull the essay from the curriculum. He noted that there are other assigned readings at Cumberland High that use profanity, including J.D. Salinger’s novel *The Catcher in the Rye*, and these works are assigned by teachers because they touch upon themes important for adolescents.

“It’s no *Catcher in the Rye*, and there is language that is offensive in the essay, but no more than what kids are exposed to in music, video games, television shows and movies,” he said. “I think it’s a very appropriate decision. [Morelle] handled the issue immediately and she handled it correctly.”

Clarke’s essay is part of a compilation of 25 short stories and essays in *When I was a Loser: True Stories of (Barely) Surviving High School*, published this year by Free Press, that is about defining moments of high school and adolescence. In the essay, Clarke describes himself as an unpopular teen who annoyed students and teachers and spent much of his time in the library. He enumerates the many ways that his peers teased and ridiculed him. Then, Clarke is convinced he could become popular by winning a coveted spot on the student council. Inspired by a book on subliminal advertising, he slips the word “S-E-X” into his campaign posters. He wins and is embraced by the “in” crowd.

The profanity and references to sex with animals is contained in the part of the essay in which he summarizes what he learned from the book.

But it’s not just Clarke’s essay that Drew complains about. She says the entire compilation is filled with essays about high school that are as humorous as they are lewd. One essay details how in high school one woman rationalized her secret sexual promiscuity and her image as a good Christian girl.

“I’m not saying it isn’t a good book. But read the back cover. It says this book is ‘for anyone that has ever been a teenager.’ Past tense,” she said. “The point is that it is a great book to bring you back to your high school years. It’s fine for adults to reminisce. But my daughter is 15 years old. She’s never heard of people having sex with dogs.”

Clarke sympathized with the teacher who assigned the reading. “I applaud her for trying to teach it because she obviously saw what I was trying to do,” he said. “She’s the real hero in this. She was trying to do the right thing. She was probably trying to find something that resonated with her students. There’s no teacher that gets into the profession trying to corrupt kids.”

Drew said she has since chosen to remove her daughter from the reading class, but the district has been unable to find another reading class that fits her schedule. Her daughter now assists in the school guidance department to fill in the time, said Drew, and she will receive an ‘A’ for the course so long as she reports to work. “But,” Drew adds, “she’s not doing any reading.” Reported in: *Providence Journal*, October 29.

### Austin, Texas

If any subject taught in the public schools is nonpolitical, it should be math. Evolutionists, Creationists and even communists should be able to agree that one plus one equals two. But political antennae are up, following the Texas State Board of Education’s rejection of a third-grade math book, whose previous edition already was being used in at least 28 Texas school districts or charter schools and in schools around the country.

The board’s refusal to put the text, *Everyday Mathematics*, published by McGraw-Hill, on either its conforming or non-conforming textbook list will cut off state funding for the book after this year. Any district still wanting to use it will have to pay for it from local tax dollars.

Math books were the only texts reviewed this year, and the board adopted all the other offerings—more than 160—including books published in the same McGraw-Hill series for other elementary grades. The board’s critics fear that conservative members plan to veto more books in the future, despite a state law restricting the panel’s discretion over texts that address curriculum elements and meet other basic requirements.

The 1995 law, upheld last year by Attorney General

Greg Abbott, was designed to end efforts by conservatives, who have long been influential on the education panel, to use their own philosophical views in screening books. The seven Republican board members, all social or religious conservatives, who voted to block the McGraw-Hill book complained that it didn't do enough to help students memorize multiplication tables and prematurely encouraged the use of calculators.

"This is a bad book," said board chairman Don McLeroy of Bryan, one of the seven. He said the book didn't help prepare kids for the road to college. And, he indicated in an interview, the conservatives believe they have more authority over textbooks than their critics say and, apparently, the attorney general from their own party believes.

"This does set a precedent. But I don't see us abusing this at all," he said.

Kathy Miller, president of the Texas Freedom Network, which tracks the influence of social conservatives on state government, said the board was "clearly thumbing its nose at the law."

The last time the board created a textbook stir was in 2001, when it rejected an environmental science book that dared to discuss global warming, among other controversial issues. Reported in: *Houston Chronicle*, November 25.

### North Richland Hills, Texas

The racial epithet leapt from the chalkboard. It was listed along with other emotionally charged words designed to illustrate the power of language in an introductory lesson to *The Adventures of Huckleberry Finn*. For 17-year-old Ibrahim Mohamed, encountering such a hateful word written so clearly in front of him was painful. So he asked his teacher to shorten it to the "N-word."

Ibrahim Mohamed, 17, with his mother, Tonya Mohamed, and members of the Coalition to Stop the N-Word met with the Birdville Superintendent about Ibrahim's experiences in an English class at Richland High School in the suburban Dallas area. He said his request was met with questions from his teacher.

"She asked me: 'Does it offend you? It hurts, doesn't it?'" he said. "To me, it was cruel the way it was presented. It didn't help the lesson at all. It showed improper judgment."

The recent incident, which angered local black and Muslim leaders, illustrates the sharp divide that often develops when trying to teach the book, which was written when words now considered slurs were commonly used.

Ibrahim, a junior at Richland High School in North Richland Hills, complained to his mother and the principal. The lone black student in the class, he said the questioning by his teacher made him feel unnecessarily singled out.

Birdville ISD officials say the exercise was part of a new curriculum designed to put such powerful words in the proper context and was not meant to offend anyone. The curriculum, which was developed by the district's

11th-grade English teachers and a consultant over the summer, has now been shelved and will be reviewed.

"These are experienced teachers, and they wanted a way to better prepare the students for the emotions of the words," said Ellen Bell, Birdville's associate superintendent for curriculum and instruction. "The teacher's intent was to prepare students and not to offend anyone. But we apologize sincerely to the student."

Ibrahim's mother wants the book banned. "The Coalition to Stop the N-Word" met with the Birdville ISD superintendent seeking a written apology for the family and sensitivity training for teachers. The coalition is made up of members of the Dallas chapters of the National Black United Front, the New Black Panther Party, the Nation of Islam, the Black Coalition to Maximize Education, and the NAACP. It also includes DISD board member Ron Price, the Islamic Center of Irving and the Council on American Islamic Relations.

Thomas Muhammad, a spokesman for the coalition, said that the group wants the book banned because it is representing the family's wishes.

But Price said that the book has value and he did not think it should be banned. "To remove the book is to keep people in ignorance," he said.

District officials declined to name the teacher involved and said they could not talk about what, if any, punishment she received. The teacher has apologized to the student and his family, said Mark Thomas, a school district spokesman.

From Minneapolis to Kansas City to Detroit, efforts are made each year to ban *Huckleberry Finn*. Published in 1885, it remains one of the nation's most hotly debated and challenged books. Scholars of the book's author, Mark Twain, said the context provided during lessons can make all the difference between a student being enlightened or offended.

"You want to create a safe place where students of all ethnicities feel comfortable reading a challenging text," said Jocelyn Chadwick, a former Harvard educator who has written books and essays about how to teach the book. The former Irving, Texas, teacher now travels the country meeting with students, teachers and parents about effective ways to approach the book.

Chadwick said many teachers have not been adequately prepared to introduce sensitive materials into their classes because there is no standard curriculum to which they can refer. "If you're teaching European or Middle Eastern literature, you put it into historical context before you ever teach the book," she said. "With American literature, we assume the students get it. But they don't. They don't always know their history."

James Leonard, head of the English department at The Citadel, has written and edited two books on teaching Mark Twain's works. He and other Twain scholars advocate surrounding a lesson on the book with other works from the same time period, such as black writers Frances Harper and Frederick Douglass. "We need to understand the racial context of the time," he said. "There are some real dangers



in people not understanding this book.”

Twain scholar Shelley Fisher Fishkin, an English professor and American studies' director at Stanford University, wrote in an essay that “irony, history, and racism all painfully intertwine in our past and present, and they all come together in *Huck Finn*. Because racism is endemic to our society, a book like *Huck Finn*, which brings the problem to the surface, can explode like a hand grenade in a literature classroom accustomed to the likes of *Macbeth* or *Great Expectations*,” she wrote. “If we lived in a world in which racism had been eliminated generations before, teaching *Huck Finn* would be a piece of cake. Unfortunately that’s not the world we live in.”

Chadwick said “great literature makes people uncomfortable.” But, she said, that doesn’t mean it shouldn’t be taught. “We want critically thinking people in this country,” she said. “In order not to like this book, you at least have to read it.”

Ibrahim has been assigned to another English class at Richland High School. His mother still wants the book banned. She said she’s never read the entire book and doesn’t intend to. Her son, however, said: “I’ll give it a chance. I’ll read it.” Reported in: *Dallas Morning News*, November 1.

### **Tuscola, Texas**

A Jim Ned High School teacher accused of providing a book with graphic content to a student told the school’s principal he had not read *Child of God* before the student selected it for a book report.

Kaleb Tierce, a third-year English teacher and coach at Jim Ned High School, has been on paid administrative leave since early October as the Taylor County Sheriff’s Office conducts an investigation into whether he provided harmful materials to a minor and whether he had inappropriate relationships with more than one former student.

James and Sonja Rhodes, parents of a freshman pre-advanced placement student, complained October 1 to Jim Ned High School Principal Paul Lippe that the book *Child of God*, by Cormac McCarthy, was inappropriate for their daughter.

Tierce, a third-year teacher and assistant football coach, was not arrested, but his case caused an uproar in this West Texas town of 700 people. In October, more than 120 parents and students crowded into a meeting where the school board voted to keep Tierce on paid leave.

Most parents said Tierce should be reinstated, regardless of whether the book is too graphic for teens. “He’s a great teacher and coach and motivates the kids like no one else can,” said Chris Garcia, whose daughter was in one of Tierce’s classes. “If you’re trying to protect your kids from things in books, you may as well turn off the TV and video games. You try to protect them as much as you can, but these days kids are just exposed to so much.”

Some students and athletes have worn armbands to

school and football games emblazoned with Tierce’s initials, hiding them under clothing. Others said teens were meeting secretly to decide how to help the teacher they believe did nothing wrong.

“He was the only one who understood us,” said Patrisha Ramirez, 15. “He would joke around. He would make English interesting, for once.”

In Tuscola, south of Abilene, *Child of God* was on a list of titles compiled by all of the high school English teachers for a pre-Advanced Placement class. Although administrators’ approval was not required for the list, school officials have since removed the book because they deemed it inappropriate for ninth-graders. The book was not in the school’s library, but Lippe said it was among a group of books provided by Tierce for his classroom.

The book tells the story of a town’s outsider who is falsely accused of rape, then begins killing people. The character ends up living in a cave with his victims’ decomposing bodies. The 1974 novel “plumbs the depths of human degradation,” according to its back cover.

The parents of one ninth-grade student filed a police report October 1 with the Taylor County Sheriff’s Office. Before contacting law enforcement officials, they complained to the teacher and principal, said district Superintendent Kent LeFevre, who declined to reveal their discussions.

The superintendent placed Tierce on administrative leave on October 9.

The *Abilene Reporter-News* obtained a letter of reprimand written by Lippe in Tierce’s personnel file through a Freedom of Information request. “Mr. Tierce said the English teachers and the librarian, Mrs. Swart, had gotten together to order books and to see which authors the library had in stock,” Lippe wrote in the letter. “When asked if he had read this book, he said no he had not, but he had read other books by this author.”

In the letter, Lippe advised Tierce either to read all books or reviews of books before he makes them available for students. Lippe said he was placing Tierce on probation for a year.

“Allowing books that have unacceptable content can not happen again,” Lippe wrote. “If it does, you can be terminated immediately!”

The school district’s policies outline procedures that should be followed when parents challenge a book. Materials can be reviewed through an informal process, in which a student can be provided an alternate reading selection. Parents can also request a formal review of a book, which involves the creation of a committee that studies a book and submits a report to the principal and superintendent. If the parents disagree with the committee’s recommendation, they can appeal the decision.

Jim Ned Consolidated Independent School District Superintendent Kent LeFevre said the processes were not followed in this case because the school district voluntarily removed *Child of God* from the approved reading list and

from the classroom, therefore a review of the book was not necessary.

LeFevre said the district's policies dictating how approved readings lists are generated will not change, because teachers have always been expected to be familiar with the themes of the books they recommend.

"We have to be more careful as to how the material is reviewed," LeFevre said. "The book shouldn't have gotten through without anyone ever reading a review on it beforehand. This one did. It was a mistake."

Three organizations sent a joint letter to the Jim Ned CISD board of trustees November 12 urging the district to reinstate Tierce and to allow students to read *Child of God*. The letter was authored by the leaders of the National Coalition Against Censorship, the National Council of Teachers of English and the American Booksellers Foundation for Free Expression.

"Literature that addresses violent, complicated and deeply disturbing themes like these challenges students to grapple emotionally and intellectually with these events," the letter said. "The school district would potentially put its students at an educational disadvantage in college if it did not introduce them to challenging literature of this sort in high school." Reported in: *Abilene Reporter-News*, October 16, 20, November 12; *Boston Globe*, October 22.

### **Kanawha County, West Virginia**

Two books by South Carolina author Pat Conroy will be kept out of a West Virginia high school's English classrooms temporarily. The Kanawha County Board of Education did not act November 5 on a committee's recommendation to restore *Beach Music* and *The Prince of Tides* to a Nitro High honors English class for juniors.

The books were temporarily suspended from teacher Steve Shamblin's honors English and advanced placement literature classes after parents complained about the books' scenes of violence, sexual assault, child rape, suicide and more.

Board member Bill Raglin instead asked that a proposed book rating system and other suggestions on reading materials be written into formal county policy. The rating system would involve advisory labels placed on books that show content for violence, language, sexual content or adult situations, similar to how movies are currently rated.

The president of a conservative West Virginia organization also criticized the actions of the committee of Kanawha County residents, a majority of which voted to keep the books.

Kevin McCoy, president of the West Virginia Family Foundation, addressed a letter to Kanawha County school board President Jim Crawford. Among other complaints, McCoy argued there were no rules to govern a quorum of voting members, many committee members remained anonymous, casting doubt on the recommendation, and he was not permitted inside the meeting while another nonvot-

ing member was allowed.

"All I have to say is he wasn't there, so his comments probably have a high degree of inaccuracy," said Judy Gillian, language arts curriculum specialist for Kanawha County schools.

Gillian invited area residents to join the committee. Fourteen joined but only ten voted, for various reasons. One member had not finished *Beach Music*. Another, a school system employee, didn't feel comfortable voting.

McCoy also wrote that there was no agreement reached, among committee members, on votes being counted or rejected for those members not present. One person submitted her vote outside a recent meeting at the Board of Education office on Elizabeth Street, Gillian said.

Six committee members agreed to retain *Beach Music* and provide an alternative work if requested by a parent. Two agreed to retain the book as intended by Shamblin, but did not mention allowing alternatives. One person voted to restrict *Beach Music*, and said it is too offensive in the classroom. Teachers should find works that are inclusive and do not exclude for class assignments, the person said.

McCoy wrote that committee members were told they had to be anonymous to each other. That casts further doubt on both the "makeup and veracity of any credible recommendation to the [school board] by this committee as to the appropriate use" of the books in a classroom, he wrote.

Gillian said committee members had the freedom to identify themselves at any time during the meeting. She did not, however, refer to them by name. She left that up to those who attended. Some did not feel comfortable being identified, she said.

McCoy said he was told the opposite by one of the committee members, whom he described as a good Christian that he trusts. "I'm not disputing what Ms. Gillian's stating," he said. "I'm just telling you what I was told."

McCoy wrote that Gillian did not allow him to observe the meeting even though at least one other person present—other than Gillian—was not a voting member. Gillian said that a woman she mentors was checking in committee members outside the room and later helped run the meeting. "The circumstances of the meeting allow it to be a closed meeting, according to the board lawyer . . .," she said.

McCoy said his group favors a rating system, like that proposed by Raglin, but does not want any books allowed in school that detail scenes of heterosexual or homosexual acts or other graphic imagery. Reported in: *Charleston Gazette-Mail*, October 5, 12, November 8.

## **student press**

### **Lexington, Kentucky**

The University of Kentucky has been considering the segregation of its Greek system (a common situation at

colleges with large fraternity and sorority traditions) and what to do about it. While no solution has been found, black students and white Greeks were suddenly united October 5 to condemn the student newspaper for a cartoon that tried to explore the issue.

The cartoon in *The Kentucky Kernel* featured a black man in chains on an auction block. Three fraternities, “Aryan Omega,” “Alpha Caucasian” and “Kappa Kappa Kappa,” are seen bidding on the man. The caption: “UK Greeks lead the way on integration with this year’s new bids.”

Within hours of the newspaper’s distribution, students were protesting outside the journalism building, calling the cartoon insensitive, regardless of the apparent attempt to draw attention to segregation. One student was quoted in the paper as saying: “I don’t care about the purpose. I cared about this man in chains. . . . I felt disrespected as a black woman.”

And a few hours after that, both the cartoonist and the newspaper’s editor were apologizing. Bradley Fletcher, the cartoonist, wrote that he viewed the cartoon when he drew it as “progressive and encouraging of social change,” but he added “I was wrong,” and apologized to both black and Greek students. “I feel only apologetic and upset with myself for being so hasty in drawing the cartoon without thinking about how it could be read from perspectives besides my own. The fact that I drew the cartoon with the images I chose and did not realize how offensive they are shows quite clearly the racial divide in our society which I was attempting to attack,” he wrote.

The editor, Keith Smiley, also apologized. “Sometimes, it is necessary to be offensive or controversial to make a point. In this case, we crossed the line, and any message in the cartoon was obscured by its offensiveness,” he wrote. Reported in: *insidehighered.com*, October 8.

### **Iowa City, Iowa**

Several City High students were upset after school administrators pulled issues of the school newspaper that contained results of a survey about racial attitudes. The October 19 edition of the *Little Hawk* was pulled following complaints from black students at the school, executive editor Adam Sullivan said. He said City High principal Mark Hanson pulled the issues unfairly.

“He didn’t tell anybody,” Sullivan, 17, a City High senior, said. “My staff, my adviser.”

The student newspaper published a survey of 350 students about their attitudes on race, religion and sexuality. According to the survey, 13 percent of those polled viewed black students unfavorably, while 2 percent viewed white students unfavorably.

Hanson said the survey, as well as an editorial pleading for racism at City High to be addressed, caused three “near-fights” between students. He said he decided to pull the issue to promote student safety.

“Each one was spawned after they had read these articles,” Hanson said. “If I think there is something endangering student safety, I’m going to do something about it.”

Sullivan said the articles were meant to create discussion about race among students. He said there have been a growing number of black students at the school in recent years, a trend that has caused tension among some students, he said. While Hanson said he did not think the survey was accurate, Sullivan said he was happy with the newspaper.

“This is real journalism,” Sullivan said. “This is a page I’m proud of. We’re teenagers, but we can do this.”

Jeff Morris, the *Little Hawk* faculty adviser at City High, said under Iowa’s student press law, school administrators have the right to censor student publications if they deem it a “substantial disruption” to the school. “If Hanson did what he did, it’s his call,” Morris said. “Obviously, Adam is the executive editor and of course, he wouldn’t want (the paper) pulled.”

Hanson said he met with the student newspaper staff after he’d pulled the paper and explained the rationale behind his decision. He said his decision would stand.

Sullivan, however, said most City High students sided with the newspaper on the issue. “Legally, he may have been able to do that,” he said. “Just because you can get away with it doesn’t mean you should do it.” Reported in: *Iowa City Press-Citizen*, October 24.

## **colleges and universities**

### **St. Paul, Minnesota**

Last September’s visit by Iran’s president to Columbia University symbolized to many the openness of American higher education to hearing controversial ideas and individuals. An incident coming to light at the University of St. Thomas, in St. Paul, illustrates that some speakers are denied campus platforms. In this case, the would-be speaker isn’t a Holocaust denier. Nor does he run a government that routinely denies basic civil rights to scholars, journalists or gay people.

The speaker barred at St. Thomas won the Nobel Peace Prize. Archbishop Desmond Tutu, who won the prize for his nonviolent opposition to South Africa’s apartheid regime, was deemed unworthy of appearing at St. Thomas because of comments he made criticizing Israel—comments the university says were “hurtful” to some Jewish people. Further, the university demoted the director of the program that invited Tutu after she wrote a letter to him and others complaining about the revocation of the invitation.

The incident only became public when it was reported by *City Pages*, the alt-weekly in Minneapolis-St. Paul last Fall. The revoked invitation has some faculty members at the university seething.

“There isn’t any academic freedom here when this happens,” said Marv Davidov, an adjunct faculty member who

has taught courses about nonviolence for fifteen years at the university. “This is cowardice.”

Tutu was invited to the university through a program called PeaceJam International, which organizes conferences for high school students on issues related to peace. While the program is not officially a part of St. Thomas, many faculty members—especially in the Justice and Peace Studies Program—are involved in it, and major speakers sometimes appear on the campus, reaching those at the university in addition to the high schoolers in the program. Tutu, invited through the Justice and Peace Studies Program, was to talk at St. Thomas about issues of peace and nonviolence and there was no expectation that his talk would focus on the Middle East.

Doug Hennes, vice president for university and government relations at St. Thomas, said that when administrators were informed of the invitation, they did some research about Tutu, and found that some of his comments had been controversial. Then, the university consulted with some Jewish leaders, and concluded that Tutu had made remarks that had been “hurtful” to Jewish leaders.

“We had heard some criticism of him in the past that he had said things some people judged to be anti-Semitic. We talked to the Jewish Community Relations Council. We know a number of other people in the Jewish community, and they said that some of the things he said had been hurtful and there was a feeling—and this isn’t among all Jews—that he had said things that were hurtful to them,” Hennes said.

“We never made a judgment that he is anti-Semitic. We have not made that judgment. We have only been told by members of the Jewish community that his words have been hurtful,” Hennes said. He stressed that the university sought out the views of Jewish leaders, and that the revocation of the invitation was a university decision, and not one that was sought by anyone outside St. Thomas.

“We make decisions every day on a regular basis on whether to invite people to campus,” Hennes said. Asked if disqualifying people from speaking for being “hurtful” might block many speakers, he said, “That’s not the case at all. We have speakers on a wide variety of issues and interests, including sensitive issues within the Catholic church.” St. Thomas is a Roman Catholic university. “I don’t think this squelches academic freedom,” he said. “We made one decision about an individual.”

The individual in question won the Nobel Peace Prize in 1984 for his work promoting equality in South Africa through nonviolent means. While St. Thomas doesn’t want him to speak, he has been honored by numerous American colleges with honorary degrees.

The comments by Tutu that appear to have set off scrutiny of the invitation came in a 2002 speech in Boston about Israel’s occupation of the West Bank. The Zionist Organization of America has criticized the speech and said that in it, Tutu compared Israel to Hitler. But a transcript of the speech raises questions about that interpretation. In the

transcript, published by one of the groups that sponsored the lecture, Tutu is harshly critical of Israel’s government and of the pro-Israel lobby in the United States and expresses regret that some Jews in Israel and elsewhere do not identify with the oppression of Palestinians. But Tutu also explicitly talks about Israel’s right to exist within secure borders.

The mention of Hitler in the speech came during a section in which Tutu urged the audience not to assume that the status quo lasts forever, and in which he urged those listening to challenge the “Jewish lobby” in the United States. “People are scared in this country [U.S.], to say wrong is wrong because the Jewish lobby is powerful, very powerful. Well, so what? This is God’s world. For goodness sake, this is God’s world. We live in a moral universe. The apartheid government was very powerful, but today it no longer exists. Hitler, Mussolini, Stalin, Pinochet, Milosevic, and Idi Amin were all powerful, but in the end, they bit the dust.”

Davidov, the adjunct at St. Thomas, said he knew that some people were offended by such comments, but he rejected the idea that all Jews were offended. He noted that he is Jewish, and agrees with Tutu’s remarks and frequently criticizes Israel himself.

Cris Toffolo, an associate professor of political science and until recently director of the Justice and Peace Studies Program, questioned the idea that anyone who makes hurtful comments should be barred from speaking. “There are some things in the world that are just hard to talk about, but when you get past the hurt, you can get to the real issues, and explore those in a way that could move the world to a more just place,” she said.

Toffolo said she believed in the guidelines on controversial speakers distributed by the American Association of University Professors, an approach that says that controversy should never justify keeping away a speaker. She said that even if some find Tutu’s ideas offensive, that’s no reason to keep him from being heard. Exposing students to controversy, she said, doesn’t endorse any particular point of view. For example, her introductory political theory course, she assigns students to read an excerpt from *Mein Kampf*. Well aware that Hitler’s manifesto may be hurtful to Jews and others in the course, Toffolo said she has asked students how they feel about the assignment, and she’s been pleased that students find it valuable—and understand why the reading is included.

“They understand that this was part of the debate at that time and we need to know about it,” Toffolo said. “It’s only by confronting all of the realities that we can come to a deeper understanding of any period,” she said.

Toffolo said she was informed that she was losing the directorship of the program she led, and received a negative evaluation, right after she spoke out against rescinding the Tutu invitation. She said administrators were very clear with her about the relationship between their decision on



her leadership of the program, and the invitation. Hennes, the St. Thomas vice president, confirmed that Toffolo was removed as chair shortly after she defended the Tutu invitation, but he declined to say why she was removed, citing the confidentiality of personnel decisions.

“It’s outrageous and it infringes on my academic freedom,” said Toffolo of the university’s decision to strip her of the program director’s position.

While Toffolo’s work does not focus on the Middle East, she said that she saw what happened to her as part of a pattern in which professors who are critics of Israel face difficulty with their careers. “This case is interesting because there are so many faculty members running afoul because of their views on Israeli policy in the occupied territories or U.S. foreign policy in terms of Israel,” she said. “We need to be able to have serious discussions of these issues.” Reported in: [insidehighered.com](http://insidehighered.com), October 4.

## **broadcasting**

### **New York, New York**

Those who happened to click on [Pacifica.org](http://Pacifica.org) October 3 could hear Allen Ginsberg intoning, “I saw the best minds of my generation destroyed by madness, starving hysterical naked,” along with the rest of his classic poem “Howl.” The occasion was the 50th anniversary of a court ruling that found the poem had “redeeming social importance” and was thus not obscene.

Yet Ginsberg, who died in 1997, was heard online and not on the New York radio station WBAI-FM, affiliated with the Pacifica network, because the station feared that by broadcasting “Howl” it could run afoul of the Federal Communications Commission’s interpretation of indecency and incur bankrupting fines.

Janet Coleman, WBAI’s arts director, said that when the idea of airing the poem to test the law was proposed, “I said, ‘Yes, let’s try it.’” The radio station has a history of championing the First Amendment, having broadcast the comedian George Carlin’s “seven dirty words” routine that resulted in a 1978 Supreme Court ruling on indecency. But after several harsh FCC rulings in 2004—against CBS for a glimpse of Janet Jackson’s breast during the Super Bowl halftime show and against Fox for curse words used during the Billboard Music Awards—“our lawyer felt it was too risky,” Coleman said. The commission can impose “draconian fines,” she said, that could put WBAI out of business.

In 2005, Congress raised limits on fines for obscenity, enabling the FCC to charge up to \$325,000 for every violation of its standards. The commission marks the hours between 6 a.m. and 10 p.m. as a time when the airwaves should be free of offensive language.

“It seems like déjà vu all over again,” said Al Bendich, one of the lawyers who argued the case in 1957.

WBAI, which is part of the Pacifica network, decided to run “Howl Against Censorship” on the Pacifica Web site because the Internet, satellite programming and cable TV are not regulated by the FCC. The show included a 24-minute recording from 1959 of Ginsberg reading his poem; an interview with Lawrence Ferlinghetti, the original publisher of “Howl” and the defendant in the 1957 case; and a panel on the First Amendment.

“Since 2004 there’s really been a sea change,” said Ronald Collins, a First Amendment lawyer and an author, referring to changes since the Janet Jackson incident. “Howl” has been repeatedly broadcast, but now “it’s a completely different era,” he said. “The FCC made it clear it has a zero-tolerance policy for offensive language and images.”

Collins was among a group of people, including Ferlinghetti and Bendich, who approached WBAI about airing the poem. They could have tried to get a preliminary judgment from the FCC, but Collins said that the commission doesn’t respond to such requests.

When asked about the broadcasting of the poem, Mary Diamond, a spokeswoman for the commission, referred to the agency’s fact sheet: “The FCC is barred by law from trying to prevent the broadcast of any point of view.” It goes on to say, “However, the Commission does have enforcement responsibilities in certain limited instances.”

In June, the U.S. Court of Appeals for the Second Circuit in New York ruled against the FCC in the Fox case, but the commission has indicated that it will appeal to the Supreme Court. The Court of Appeals for the Third Circuit has not ruled in the CBS case. Collins said that the First Amendment issues raised by these cases would ultimately be decided by the Supreme Court.

Ferlinghetti, 88, who owns the landmark City Lights bookstore in San Francisco, said that when “Howl” was labeled obscene, first by United States Customs agents and then by the San Francisco police, it “wasn’t really the four-letter words.” He added, “It was that it was a direct attack on American society and the American way of life.”

Ferlinghetti quoted the unpublished 1957 opinion by San Francisco Municipal Judge Clayton W. Horn, whom he noted was “a God-fearing Sunday school teacher”: “Would there be any freedom of press or speech if one must reduce his vocabulary to vapid innocuous euphemism?” Judge Horn wrote. “An author should be real in treating his subject and be allowed to express his thoughts and ideas in his own words.” Reported in: *New York Times*, October 4. □

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*(most censored stories . . . from page 1)*

to be an “enemy of the state.” The judgment on who is deemed an “enemy combatant” is solely at the discretion of President Bush.

While it is true that some parts of the MCA target non-citizens, other sections clearly apply to U.S. citizens as

well, putting citizens inside the same tribunal system with non-citizen residents and foreigners.

Section 950q of the MCA states that, “Any person is punishable as a principal under this chapter [of the MCA] who commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission.”

Section 950v. “Crimes Triable by Military Commissions” seems to specifically target American citizens by stating that, “Any person subject to this chapter who, in breach of an allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.”

Besides allowing “any person” to be so punished, the law prohibits detainees once inside from appealing to the traditional American courts until after prosecution and sentencing, which could translate into an indefinite imprisonment since there are no timetables for the tribunal process to play out.

Section 950j of the law further states that once a person is detained, “not withstanding any other provision of law (including section 2241 of title 28 or any other habeas corpus provision) no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action whatsoever relating to the prosecution, trial, or judgment of a military commission under this chapter, including challenges to the lawfulness of procedures of military commissions.”

In a statement to the Senate Judiciary Committee on January 18, 2007, then–Attorney General, Alberto Gonzales said: “The Constitution doesn’t say every individual in the United States or citizen is hereby granted or assured the right of habeas corpus. It doesn’t say that. It simply says the right shall not be suspended.”

## 2. Bush Moves Toward Martial Law

The John Warner Defense Authorization Act of 2007, which was quietly signed by President Bush on October 17, 2006, the very same day that he signed the Military Commissions Act, allows the president to station military troops anywhere in the United States and take control of state-based National Guard units without the consent of the governor or local authorities, in order to “suppress public disorder.”

By revising the two-century-old Insurrection Act, the law in effect repeals the Posse Comitatus Act, which placed strict prohibitions on military involvement in domestic law enforcement. The 1878 Act reads, “Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.” As the only U.S. criminal statute that outlaws military operations directed against the American people, it has been a strong protection against martial law—the harsh system of rules that takes effect when the military takes control of the normal administra-

tion of justice. Historically, martial law has been imposed by various governments during times of war or occupation to intensify control of populations in spite of heightened unrest. In modern times, it is most commonly used by authoritarian governments to enforce unpopular rule.

Section 333 of the Defense Authorization Act of 2007, entitled “Major public emergencies; interference with State and Federal law,” states that “the President may employ the armed forces, including the National Guard in Federal service—to restore public order and enforce the laws of the United States when, as a result of a natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident, or other condition in any State or possession of the United States, the President determines that domestic violence has occurred to such an extent that the constituted authorities of the State or possession are incapable of (or “refuse” or “fail” in) maintaining public order—in order to suppress, in any State, any insurrection, domestic violence, unlawful combination, or conspiracy.”

Author Frank Morales noted that despite the unprecedented nature of this act, there was no outcry in the American media, and little reaction from elected officials in Congress. On September 19, a lone Senator, Patrick Leahy (D-VT), noted that 2007’s Defense Authorization Act contained a “widely opposed provision to allow the President more control over the National Guard [adopting] changes to the Insurrection Act, which will make it easier for this or any future President to use the military to restore domestic order without the consent of the nation’s governors.”

A few weeks later, on September 29, Leahy entered into the *Congressional Record* that he had “grave reservations about certain provisions of the fiscal Year 2007 Defense Authorization Bill Conference Report,” the language of which, he said, “subverts solid, longstanding posse comitatus statutes that limit the military’s involvement in law enforcement, thereby making it easier for the President to declare martial law.” This had been “slipped in,” Leahy said, “as a rider with little study,” while “other congressional committees with jurisdiction over these matters had no chance to comment, let alone hold hearings on, these proposals.”

Leahy noted “the implications of changing the [Posse Comitatus] Act are enormous.” “There is good reason,” he said, “for the constructive friction in existing law when it comes to martial law declarations. Using the military for law enforcement goes against one of the founding tenets of our democracy. We fail our Constitution, neglecting the rights of the States, when we make it easier for the President to declare martial law and trample on local and state sovereignty.”

## 3. AFRICOM: U.S. Military Control of Africa’s Resources

In February 2007, the White House announced the formation of the U.S. African Command (AFRICOM), a new unified Pentagon command center in Africa, to be established by September 2008. This military penetration

of Africa was presented as a humanitarian guard in the Global War on Terror. The real objective, however, may be the procurement and control of Africa's oil and its global delivery systems.

The most significant and growing challenge to U.S. dominance in Africa is China. An increase in Chinese trade and investment in Africa threatens to substantially reduce U.S. political and economic leverage in that resource-rich continent. The political implication of an economically emerging Africa in close alliance with China is resulting in a new cold war in which AFRICOM will be tasked with achieving full-spectrum military dominance over Africa.

AFRICOM will replace U.S. military command posts in Africa, which were formerly under control of U.S. European Command (EUCOM) and U.S. Central Command (CENTCOM), with a more centralized and intensified U.S. military presence.

It is in Western and Sub-Saharan Africa that the U.S. military force is most rapidly increasing, as this area is projected to become as important a source of energy as the Middle East within the next decade. In this region, challenge to U.S. domination and exploitation is coming from the people of Africa—most specifically in Nigeria, where seventy percent of Africa's oil is contained.

In FY 2005, the Trans-Sahara Counter Terrorism Initiative received \$16 million; in FY 2006, nearly \$31 million. A big increase is expected in 2008, with the administration pushing for \$100 million each year for five years. With the passage of AFRICOM and continued promotion of the Global War on Terror, Congressional funding is likely to increase significantly.

#### **4. Frenzy of Increasingly Destructive Trade Agreements**

The Oxfam report, "Signing Away the Future," reveals that the U.S. and European Union (EU) are vigorously pursuing increasingly destructive regional and bilateral trade and investment agreements outside the auspices of the World Trade Organization (WTO). These agreements require enormous irreversible concessions from developing countries, while offering almost nothing in return. Faster and deeper, the U.S. and EU are demanding unprecedented tariff reductions, sometimes to nothing, as the U.S. and EU dump subsidized agricultural goods on undeveloped countries, plunging local farmers into poverty. Meanwhile, the U.S. and EU provide themselves with high tariffs and stringent import quotas to protect their own producers.

During 2006, more than one hundred developing countries were involved in FTA or Bilateral Investment Treaty (BIT) negotiations. "An average of two treaties are signed every week," the report says, "Virtually no country, however poor, has been left out."

Much of the recent debate and controversy over trade negotiations has revolved around the increasingly devastating trade-distorting practices of rich countries versus the

developing countries' needs for food security and industrial development. The new generation of agreements, however, extends far beyond this traditional area of trade policy—imposing a damaging set of binding rules in intellectual property, services, and investment with much deeper consequences for development and impacts on the poor.

Double standards in the intellectual-property rights chapters of most trade agreements are glaring. As new agreements limit developing countries' access to patented technology and medicines—while failing to protect traditional knowledge—the public-health consequences are staggering. The U.S.–Colombia FTA is expected to reduce access to medicines by 40 percent and the U.S.–Peru FTA is expected to leave 700,000 to 900,000 Peruvians without access to affordable medicines.

U.S. and EU FTAs also require the adoption of plant-breeder rights that remove the right to share seeds among indigenous farmers.

New rules also pose a threat to essential services as FTAs allow foreign investors to take ownership of health-care, education, water, and public utilities.

Investment chapters of new FTAs and BITs allow foreign investors to sue for lost profits, including anticipated future profits, if governments change regulations, even when such reforms are in the public interest. These rules undermine the sovereignty of developing nations, transferring power from governments to largely unaccountable multinational firms. A growing number of investment chapters and treaties further tip the scales of justice by preventing governments from screening or regulating foreign investment—banning the use of all "performance requirements" in all sectors including mining, manufacturing, and services.

More than 170 countries have signed international investment agreements that provide foreign investors with the right to turn immediately to international investor-state arbitration to settle disputes, without first trying to resolve the matter in national courts. Such arbitration fails to consider public interest, basing decisions exclusively on commercial law.

Oxfam notes that the only group privy to this information is an increasingly powerful select group of commercial lawyers, whose fees often place them out of reach of developing-country governments. These lawyers, according to the Oxfam report, are eager to advise foreign investors regarding opportunities to claim compensation from developing countries under international investment agreements.

Strong opposition is growing to the political asymmetry inherent in these bilateral trade and investment agreements. As Oxfam notes, "It is in nobody's long-term interest to have a global economy that perpetuates social, economic, and environmental injustice."

#### **5. Human Traffic Builds U.S. Embassy in Iraq**

The enduring monument to U.S. liberation and democracy in Iraq will be the most expensive and heavily fortified

embassy in the world, which is being built by a Kuwait contractor repeatedly accused of using forced labor trafficked from South Asia under U.S. contracts. The \$592 million, 104-acre fortress equal in size to the Vatican City was scheduled to open in September 2007. With a highly secretive contract awarded by the U.S. State Department, First Kuwaiti Trading & Contracting joined the ranks of Halliburton/KBR in Iraq by using bait-and-switch recruiting practices. Thousands of citizens from countries that have banned travel or work in Iraq are being tricked, smuggled into brutal and inhumane labor camps, and subjected to months of forced servitude—all in the middle of the US-controlled Green Zone, “right under the nose of the U.S. State Department.”

The Associated Press reports that, “The 5,500 Americans and Iraqis working at the embassy are far more numerous than at any other U.S. mission worldwide,” but there is no mention in major media of the 3,000 South Asian laborers working for contractors in dangerous and abysmal living and working conditions.

One such contractor is First Kuwaiti Trading and Contracting. FKTC has procured several billion dollars in U.S. construction contracts since the war began in March 2003. Much of its work is performed by cheap labor hired from South Asia. The company currently employs an estimated 7,500 foreign laborers in theaters of war.

American FKTC employees report having witnessed the issuance of false boarding passes to Dubai, and passport seizure from plane-loads of South Asian workers, who were instead routed to war-torn Baghdad. Former U.S. Embassy construction manager for FKTC, John Owen, disclosed to author David Phinney that the deception had all the appearance of smuggling workers into Iraq.

On April 4, 2006, the Pentagon issued a contracting directive following an investigation that officially confirmed that contractors in Iraq, many working as subcontractors to Halliburton/KBR, were illegally confiscating worker passports, using deceptive bait-and-switch hiring practices, and charging recruiting fees that indebted low-paid migrant workers for many months or even years to their employers.

An April 19, 2006 memorandum from Joint Contracting Command in Baghdad to All Contractors again states that, “Evidence indicates a widespread practice of withholding employee passports to, among other things, prevent employees ‘jumping’ to other employers. All contractors engaging in the above mentioned practice are directed to cease and desist in this practice immediately.”

The Pentagon has yet to announce, however, any penalty for those found to be in violation of U.S. labor trafficking laws or contract requirements.

In a resignation letter dated June 2006, Owen told FKTC and U.S. State Department officials that his managers at the U.S. Embassy site regularly beat migrant workers, demonstrated little regard for worker safety, and routinely

breached security. He also complained of poor sanitation, squalid living conditions and medical malpractice in labor camps where several thousand low-paid migrant workers, recruited from the Philippines, India, and Pakistan lived. Those workers, Owen noted, earned as little as \$10 to \$30 for a twelve-hour workday.

Rory Mayberry, a medic subcontracted to FKTC to attend construction crews at the Embassy, shares similar complaints about treatment of migrant laborers. In reports made available to the U.S. State Department, the U.S. Army, and FKTC, Mayberry called for the closure of the onsite medical clinic, listing dozens of serious safety hazards, unsanitary conditions, as well as routine negligence and malpractice. He furthermore called for an investigation into deaths that he suspected resulted from medical malpractice. Mayberry is not aware of any follow-up on his allegations.

Owen says that State Department officials supervising the U.S. Embassy project are aware of abuse, but apparently do nothing. He recalls, “Once when seventeen workers climbed the wall of the construction site to escape, a State Department official helped round them up and put them in virtual lockdown.”

## 6. Operation FALCON Raids

Under the code name Operation FALCON (Federal and Local Cops Organized Nationally), three federally coordinated mass arrests occurred between April 2005 and October 2006. In an unprecedented move, more than 30,000 “fugitives” were arrested in the largest dragnets in the nation’s history. The operations directly involved over 960 agencies (state, local, and federal) and were the brainchild of Attorney General Alberto Gonzales and U.S. Marshal’s Director Ben Reyna.

The Department of Justice supplied television networks government-shot action videotape of Marshals and local cops raiding homes and breaking down doors, “targeting the worst of the worst criminals on the run,” emphasizing suspected sex offenders. Yet less than ten percent of the total 30,150 were suspected sex offenders and less than two percent owned firearms. The press has not asked, “Who were the others?” And the U.S. Marshals’ office has issued no public statement as to whether the people arrested in Operation FALCON have been processed or released.

Altogether, there were three FALCON Operations, each netting roughly 10,000 criminal suspects. Between April 4–10, 2005, FALCON I swept up 10,340 fugitives in the largest nationwide mass arrest (to that date) in American history. Gonzalez proudly announced on April 15 that “Operation FALCON is an excellent example of President Bush’s direction and the Justice Department’s dedication to deal both with the terrorist threat and traditional violent crime. This joint effort shows the commitment of our federal, state, and local partners to make our neighborhoods safer, and it has led to the highest number of arrests ever recorded for a single initia-



tive of its kind. We will use all of our Nation's law enforcement resources to serve the people, to pursue justice, and to make our streets and Nation safer."

Operation FALCON II, carried out the week of April 17–23, 2006, arrested another 9,037 individuals from twenty-seven states mostly west of the Mississippi River. Operation FALCON III, conducted during the week of October 22–28, 2006, netted another 10,733 fugitives in twenty-four states east of the Mississippi River.

The U.S. Marshals Service has not disclosed the names of the people arrested in these massive sweeps nor of what crimes they were accused. We have no way of knowing whether they were provided with due process of law, where they are now, or whether they have been abused while in custody.

The media played an essential role in concealing important details of the Operation. In fact, the articles that appeared in newspapers across the country suggest that the media may have collaborated directly with the Justice Department. Nearly identical "news" segments and articles put the best possible spin on a story that most Americans might find deeply disturbing, and perhaps frightening.

## **7. Behind Blackwater Inc.**

The company that most embodies the privatization of the military industrial complex is the private security firm Blackwater. Blackwater is the most powerful mercenary firm in the world, with 20,000 soldiers and controls the world's largest private military base, a fleet of twenty aircraft, including helicopter gunships, and a private intelligence division. The firm is also manufacturing its own surveillance blimps and target systems.

One of the last things Dick Cheney did before leaving office as Defense Secretary under George H. W. Bush was to commission a Halliburton study on how to privatize the military bureaucracy. That study effectively created the groundwork for a continuing war profiteer bonanza.

During the Clinton years, Erik Prince envisioned a project that would take advantage of anticipated military outsourcing. Blackwater began in 1996 as a private military training facility, with an executive board of former Navy Seals and Elite Special Forces, in the Great Dismal Swamp of North Carolina. A decade later, it is the most powerful mercenary firm in the world, embodying what the Bush administration views as "the necessary revolution in military affairs"—the outsourcing of armed forces.

In his 2007 State of the Union address, Bush asked Congress to authorize an increase in the size of the active Army and Marine Corps by 92,000 in the next five years. He continued, "A second task we can take on together is to design and establish a volunteer civilian reserve corps. Such a corps would function much like our military reserve. It would ease the burden on the Armed Forces by allowing us to hire civilians with critical skills to serve on missions

abroad when America needs them."

This is, however, precisely what the administration has already done—largely, Jeremy Scahill points out, behind the backs of the American people. Private contractors currently constitute the second-largest "force" in Iraq. At last count, there were about 100,000 contractors in Iraq, 48,000 of which work as private soldiers, according to a Government Accountability Office report. These soldiers have operated with almost no oversight or effective legal constraints and are politically expedient, as contractor deaths go uncounted in the official toll. With Prince calling for the creation of a "contractor brigade" before military audiences, the Bush administration has found a back door for engaging in an undeclared expansion of occupation.

Blackwater has about 2,300 personnel actively deployed in nine countries and is aggressively expanding its presence inside U.S. borders. The company provides security for U.S. diplomats in Iraq, guarding everyone from Paul Bremer and John Negroponte to the current U.S. ambassador, Zalmay Khalilzad. It trains troops in Afghanistan and has been active in the Caspian Sea, where it set up a Special Forces base miles from the Iranian border. According to reports, Blackwater is negotiating directly with the Southern Sudanese regional government to start training the Christian forces of Sudan.

Cofer Black, thirty-year CIA veteran and former head of CIA's counterterrorism center, credited with spearheading the extraordinary rendition program after 9/11, is now senior executive at Blackwater and perhaps its most powerful operative.

## **8. KIA: The U.S. Neoliberal Invasion of India**

Farmers' cooperatives in India are defending the nation's food security and the future of Indian farmers against the invasion of genetically modified (GM) seed. As many as 28,000 Indian farmers have committed suicide over the last decade as a result of debt incurred from failed GM crops and competition with subsidized U.S. crops, yet when India's Prime Minister Singh met with President Bush in March 2006 to finalize nuclear agreements, they also signed the Indo-US Knowledge Initiative on Agriculture (KIA), backed by Monsanto, Archer Daniels Midland (ADM), and Wal-Mart. The KIA allows for the grab of India's seed sector by Monsanto, of its trade sector by giant agribusiness ADM and Cargill, and its retail sector by Wal-Mart.

Though the contours of KIA have been kept so secret that neither senior Indian politicians nor the scientific community know its details, it is clear that Prime Minister Singh agreed to sacrifice India's agriculture sector to pay for U.S. concessions in the nuclear field.

In one of very few public statements by a U.S. government official regarding KIA, Nicholas Burns, Under Secretary of State for Political Affairs, stated, "While the civilian nuclear initiative has garnered the most attention,

our first priority is to continue giving governmental support to the huge growth in business between the Indian and American private sectors. Singh has also challenged the United States to help launch a second green revolution in India's vast agricultural heartland by enlisting the help of America's great land-grant institutions."

Through KIA, Monsanto and the United States have asked for unhindered access to India's gene banks, along with a change in India's intellectual property laws to allow patents on seeds and genes, and to dilute provisions that protect farmers' rights. A combination of physical access to India's gene banks and a possible new intellectual property law that allows seed patents will in essence deliver India's genetic wealth into U.S. hands.

At the same time, KIA has paved the way for Wal-Mart's plans to open five hundred stores in India, starting in August 2007, which will compound the outsourcing of India's food supply and threaten 14 million small family vendors with loss of livelihood.

Farmers are, however, organizing to protect themselves against this economic invasion by maintaining traditional seed banks and setting up systems of community agrarian support. In response to the flood of debilitating debt tied to GM/hybrid seeds and the toxic petroleum based fertilizers and pesticides these crops depend on, one woman in the small village of Palarum says, "We do not buy seeds from the market because we suspect they may be contaminated with genetically engineered or terminator seeds." Instead, village women save and trade traditional seeds that have evolved over centuries to produce low-maintenance, nutritious "crops of truth."

Professor of genetics Suman Sahai concludes, "India must be cautious that it does not become the dumping ground for a technology and its controversial products that have been rejected in many parts of the world and whose safety and usefulness remain questionable. Food security is an integral part of national security. All India's efforts in the nuclear arena to shore up its national security goals will be undermined if it allows itself to become insecure in the matter of food."

## **9. Privatization of America's Infrastructure**

We will soon be paying Wall Street investors, Australian bankers, and Spanish contractors for the privilege of driving on American roads, as more than twenty states have enacted legislation allowing public-private partnerships to build and run highways.

Investment firms including Goldman Sachs, Morgan Stanley, and the Carlyle Group are approaching state politicians with advice to sell off public highway and transportation infrastructure. When advising state officials on the future of this vital public asset, these investment firms fail to mention that their sole purpose is to pick up infrastructure at the lowest price possible in order to maximize

returns for their investors. Investors, most often foreign companies, are charging tolls and insisting on "noncompete" clauses that limit governments from expanding or improving nearby roads.

In 1956, President Eisenhower signed the Federal-Aid Highway Act, which called for the federal and state governments to build 41,000 miles of high-quality roads across the nation, over rivers and gorges, swamps and deserts, over and through vast mountain ranges, in what would later be called the "greatest public works project in human history." Eisenhower considered the interstate highway system so vital to the public interest that he authorized the federal government to assume 90 percent of the massive cost.

Fifty years later, states are selling off enormous, and aging, infrastructure to private investors. Proponents are celebrating these transactions as a no-pain, all-gain way to off-load maintenance expenses and increase highway-building funds without raising taxes. Opponents are lambasting these plans as a major turn toward handing the nation's valuable common asset over to private firms whose fidelity is to stockholders—not to the public transportation system or the people who use it.

On June 29, 2006, Indiana's governor Mitch Daniels announced that Indiana had received \$3.8 billion from a foreign consortium made up of the Spanish construction firm Cintra and the Macquarie Infrastructure Group (MIG) of Australia. In exchange, the state handed over operation of a 157-mile Indiana toll road for the next seventy-five years. With the consortium collecting the tolls, which will eventually rise far higher, the privatized road should generate \$11 billion for MIG-Cintra over the course of the contract.

In September 2005, Daniels solicited bids for the project, with Goldman Sachs serving as the state's financial adviser—a role that would net the bank a \$20 million advisory fee. When Goldman Sachs, one of the nation's most active and most profitable investment banks, with deep connections to Washington, began advising Indiana on selling its toll road, it failed to mention the fact that, even as it was advising Indiana on how to get the best return, its Australian subsidiary's mutual funds were ratcheting up their positions in MIG—becoming de facto investors in the deal.

Despite public concerns, privatization of U.S. transportation infrastructure has the full backing of the Bush administration. Tyler Duvall, the U.S. Department of Transportation's assistant secretary for transportation policy, says the department has raised the idea with "almost every state" government and is working on sample legislation that states can use for such projects. Across the nation, there is now talk of privatizing the New York Thruway to the Ohio, Pennsylvania, and New Jersey turnpikes, as well as of inviting the private sector to build and operate highways and bridges from Alabama to Alaska.

In Texas, Governor Rick Perry still refuses to release details of a \$1.3 billion contract his administration signed with Cintra for a forty-mile toll road from Austin to

Seguin, or of an enormous \$184 billion proposal to build a 4,000-mile network of toll roads through Texas.

#### **10. Vulture Funds Threaten Poor Nations' Debt Relief**

Vulture funds, otherwise known as “distressed-debt investors,” are undermining UN and other global efforts to relieve impoverished Third World nations of the debt that has burdened them for many decades.

Vulture funds are financial organizations that buy up debts that are near default or bankruptcy. The vulture fund will pay the original investor pennies on the dollar for the debt and then approach the debtor to arrange a better repayment on the loan, or will go after the debtor in court.

In the private financial world, these funds, like the birds they are named for, provide a useful function for investors who are unable to follow up on defaulted debts and are themselves facing financial ruin if the debtor reneges entirely. Under normal circumstances, distressed-debt investing—like day trading—is risky business. It is a gamble and the company knows that going in. The vulture fund may get nothing for its investment if the debtor continues to default and has no assets to attach.

However, if there is still meat on the bones (the debtor has considerable assets to liquidate) the vulture fund can make millions.

A problem has arisen in recent years, however, as vulture funds have begun inserting themselves into an increasingly globalized “free market”—where no distinction is made between an irresponsible and defaulted company and a destitute and impoverished nation.

In the case of nations, the actions of vulture funds are corrupting the process begun in 1996 to provide debt relief for Third World nations struggling to emerge from the heavy debt laid upon them by previous corrupt rulers and colonial masters. In one recent case, the poverty-stricken nation of Zambia was negotiating with Romania to reduce a \$40 million debt still owed from a 1979 loan to buy Romanian tractors. In 1999, Romania had agreed to liquidate the entire loan for \$3 million. Zambia planned to use the debt cancellation to invest in much-needed nurses, teachers, and basic infrastructure. Just before the deal was finalized however, investors at the England-based vulture fund Donegal International convinced the Romanian government to sell them the loan for just under \$4 million—not much more than Zambia had offered. Donegal then turned around and sued Zambia (where the average wage is barely a dollar a day) for the full \$40 million.

Throughout the lawsuit, global NGOs have pleaded with the English High Court to void the new contract and allow Zambia to honor the original agreement of \$3 million. But on February 15, 2007, an English court ruled that Donegal was entitled to much of what it was seeking—at least \$15 million, perhaps more.

In a last desperate plea, global NGOs working to relieve

Third World debt (such as Oxfam and the Jubilee Debt Campaign) turned to Donegal directly, asking them to forgive the debt. Donegal knows that, as a national entity, even a cash-poor country like Zambia has access to considerable resources; in this case copper, cobalt, gem stones, coal, uranium, marble, and much more. Public works and other civic improvement projects can also be liquidated.

Donegal has no history of mercy toward impoverished nations. In 1996, it paid \$11 million for a discounted Peruvian debt and threatened to bankrupt the country unless they paid \$58 million. Donegal got its money. Now they're suing Congo Brazzaville for \$400 million for a debt they bought for \$10 million. Donegal and other vulture funds have teams of lawyers combing the world for assets that can be seized.

Many of these vulture funds have influential ties to powerful world leaders like the Bush administration. The risk normally faced by distressed-debt investors is virtually eliminated when they have political influence that is greater than the poor nation they are suing. They raise most of their money through legal actions in U.S. courts, where lobbying and political contributions hold influence. And many vulture fund CEOs have close links to top officials both in the U.S. and England.

President Bush has the power to block collection of debts by vulture funds, either individual ones or all of them, if he considers it to be at odds with U.S. foreign policy—in this case debt relief for poor countries. According to Congressman John Conyers, “It's our position that the Foreign Corrupt Practices Act and the comity doctrine brought from our constitution allows the president to require the courts defer in individual suits against foreign nations. And so, we're conducting a couple of things. First of all, we want to know where these practices are going on at the present time, and, two, how we can get this information to President Bush so that he can, as he indicated to us, stop it immediately.”

Chancellor Gordon Brown, now the prime minister of England, calls the vulture funds perverse and immoral. Oxfam and Jubilee have urged the chancellor to use his influence as chair of the International Monetary Fund's key decision-making committee to make sure that new regulations are devised that prevent private companies from bypassing international debt rules and pursuing debts from very poor countries.

For more details on these stories and on the remaining top 25 “most censored” stories, including citations to sources, see [http://www.projectcensored.org/censored\\_2008/index.htm](http://www.projectcensored.org/censored_2008/index.htm).

Project Censored was launched in 1976 by Dr. Carl Jensen, professor emeritus of Communications Studies at Sonoma State University. Upon Jensen's retirement in 1996, leadership of the project was passed to associate professor of sociology and media research specialist, Dr. Peter Phillips. □

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