newsletter on intellectual freedom

IFC ALA

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Cambridge contacts U.S. libraries over *Alms for Jihad*

Cambridge University Press has requested some American libraries that own the 2006 book *Alms for Jihad: Charity and Terrorism in the Islamic World,* by J. Millard Burr and Robert O. Collins, to remove it from their shelves. The publisher agreed to pulp its remaining copies in response to a libel claim filed in Britain by Khalid bin Mahfouz, a Saudi banker whom the book claims financed terrorism in Sudan and elsewhere during the 1990s.

In an August 15 letter to libraries, Intellectual Property Director Kevin Taylor said that CUP intends to "take every reasonable measure to ensure that readers who may consult this book in the future are made aware of its erroneous statements and to ensure that this defamation is not perpetuated." However, in an apparent acknowledgment that U.S. libraries are outside the jurisdiction of British libel law, Taylor appended to the letter an errata sheet with eleven corrections that he specified should be "attached inside the front cover."

The American Library Association's Office for Intellectual Freedom noted in an August 14 post on its blog, "Unless there is an order from a U.S. court, the British settlement is unenforceable in the United States, and libraries are under no legal obligation to return or destroy the book. Libraries are considered to hold title to the individual copy or copies, and it is the library's property to do with as it pleases. Given the intense interest in the book, and the desire of readers to learn about the controversy first-hand, we recommend that U.S. libraries keep the book available for their users."

Taylor defended the action, saying that *Alms for Jihad* "cited sources whose falsity had been established to the satisfaction of the English courts" and that CUP "is not in business to do ideological battle but to act responsibly as a publisher of scholarly material."

The differences between U.S. and UK libel laws are illustrated by the case against Yale University Press, which was sued in California in

April by the nonprofit group KinderUSA over allegedly erroneous statements in *Hamas: Politics, Charity, and Terrorism in the Service of Jihad,* by Matthew Levitt. KinderUSA dropped the lawsuit without penalty to the publisher after Yale filed a motion alleging that the suit had no merit and was intended as harassment (see page 263). The motion also noted that KinderUSA was reportedly under investigation by federal authorities over its fundraising activities for Islamic groups. Reported in: *American Libraries* Online, August 17. ☐

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in this issue

targets of the censor

books

periodicals

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prisons to restore purged religious books

Facing pressure from religious groups, civil libertarians and members of Congress, the federal Bureau of Prisons has decided to return religious materials that had been purged from prison chapel libraries because they were not on the bureau's lists of approved resources.

The bureau had said it was prompted to remove the materials after a 2004 Department of Justice report mentioned that religious books that incite violence could infiltrate chapel libraries. After details of the removal became widely known in September, Republican lawmakers, liberal Christians and evangelical talk shows all criticized the government for creating a list of acceptable religious books.

The bureau has not abandoned the idea of creating such lists, Judi Simon Garrett, a spokeswoman, said. But rather than packing away everything while those lists were compiled, the religious materials would remain on the shelves, Garrett explained.

The bureau statement said: "In response to concerns expressed by members of several religious communities, the Bureau of Prisons has decided to alter its planned course of action with respect to the Chapel Library Project.

"The bureau will begin immediately to return to chapel libraries materials that were removed in June 2007, with the exception of any publications that have been found to be inappropriate, such as material that could be radicalizing or incite violence. The review of all materials in chapel libraries will be completed by the end of January 2008."

Only a week earlier, the bureau said it was not reconsidering the library policy. But critics of the bureau's program said it appeared that the bureau had bowed to widespread outrage.

"Certainly putting the books back on the shelves is a major victory, and it shows the outcry from all over the country was heard," said Moses Silverman, a lawyer for three prisoners who are suing the bureau over the program. "But regarding what they do after they put them back, I'm concerned."

The bureau originally set out to take an inventory of all materials in its chapel libraries in an effort to weed out books that might incite violence. But the list grew to the tens of thousands, and the bureau decided instead to compile lists of acceptable materials in a plan called the Standardized Chapel Library Project. The plan identifies about 150 items for each of 20 religions or religious categories.

In the spring, prison chaplains were told to remove all materials not on the lists and put them in storage. The bureau said it planned to issue additions to the lists once a year. In some cases, chaplains packed up libraries with thousands of books collected over decades. Unidentified religious experts helped the bureau shape the lists of acceptable materials, which independent scholars said omitted many important religious texts.

Garrett declined to elaborate on how the re-stocking of the prison libraries is progressing. She said the effort "is beginning immediately," but would not say when it would be completed, which titles are being kept off the shelves and the specific criteria being used in such decisions.

Bob Moore, director of prison policy oversight at Aleph, an advocacy group for Jews in prison, said the lack of detail and transparency about how the lists are determined continued to trouble him.

"This is a positive step: it means they are not throwing the baby out with the bath water," he said of keeping books on the shelves for now. "But our position is there should not be a list of what should be on the shelves, but what shouldn't be."

Silverman said he had not yet spoken to the bureau, and the bureau has not posted its change in any public forum. The return of the books would "go a long way," he said, to resolving the lawsuit. But he added, "I remain concerned that the criteria for returning the books be constitutional and lawful." Reported in: *New York Times*, September 26. □

AAUP issues statement on "Freedom in the Classroom"

From a legislative perspective, the movement for the "Academic Bill of Rights" hasn't led to the enactments of bills that many professors feared. Hearings have been held, and bills introduced—and some have even advanced. But the movement hasn't produced new laws. That's not to say, though, that it hasn't had an impact. Plenty of legislators, talk radio hosts, bloggers and others have picked up the arguments put forth by David Horowitz and other proponents of the measure—namely that many professors are not only liberal, but are committed to indoctrinating students and punishing those who don't accept their views.

With the public debate having been influenced more than the law, the American Association of University Professors is trying to reframe the debate. On September 11, the association issued a new statement on "Freedom in the Classroom," taking on arguments about indoctrination, the need for measurable "balance" in courses, and the idea that professors need to stay close to an agreed upon syllabus and avoid political references unless directly and clearly related to course content.

"We want to help stiffen the spine of the professoriate," said Cary Nelson, president of the AAUP, a professor of English at the University of Illinois at Urbana-Champaign, and a member of the committee that drafted the new statement. "This is really, more than anything else, a statement directed at the higher education community," said Nelson, who added that he worried that too many professors are censoring themselves because they don't want to find

themselves answering questions about why they made some political reference or assigned a certain book and not another.

The AAUP e-mailed the statement to 350,000 American academics, and similar e-mail campaigns will take place in Canada (a French translation has been provided for those Quebec) and possibly elsewhere. "We want to give faculty members arguments that are really clear and that they can use with administrations," Nelson said.

The statement says that answering the charges of widespread abuse of classroom discussions is vital to preventing the kind of legislation and regulation academics fear. "Modern critics of the university seek to impose on university classrooms mandatory and ill-conceived standards of 'balance,' 'diversity,' and 'respect.' We ought to learn from history that the vitality of institutions of higher learning has been damaged far more by efforts to correct abuses of freedom than by those alleged abuses," the statement says. "We ought to learn from history that education cannot possibly thrive in an atmosphere of state-encouraged suspicion and surveillance."

Not surprisingly, the statement isn't winning over Horowitz. While he said in an interview that he "agrees in principle" with many of the ideas in the statement about academic freedom, he believes that the document is "evasive" and doesn't reflect what he considers widespread problems in the classroom. "This is no contribution," he said.

The AAUP statement goes through four beliefs espoused by critics of academe and seeks to provide a philosophical framework for answering each one.

Indoctrination. A common criticism of Horowitz and others—and the subject of a new film much hailed by critics of higher education—is that many professors cross the line from teaching into indoctrination, trying not so much to challenge as to convert their students. Here the AAUP noted risks with defining indoctrination in ways that could prevent professors from teaching what students need to learn—and in many cases this would involve undisputed facts.

"It is not indoctrination for professors to expect students to comprehend ideas and apply knowledge that is accepted as true within a relevant discipline. For example, it is not indoctrination for professors of biology to require students to understand principles of evolution; indeed, it would be a dereliction of professional responsibility to fail to do so," the report says.

Even in areas where there is not as much consensus among experts as is the case with evolution, professors should not be punished or criticized for having strong points of view, the report says. "Indoctrination occurs only when instructors dogmatically insist on the truth of such propositions by refusing to accord their students the opportunity to contest them. Vigorously to assert a proposition or a viewpoint, however controversial, is to engage in argumentation and discussion—an engagement that lies at the core of academic freedom. Such engagement is essential if students are to acquire skills of critical independence. The essence of higher education does not lie in the passive transmission of knowledge but in the inculcation of a mature independence of mind."

"Balance." Another common criticism is that good professors always have clearly visible "balance" between perspectives in their courses. On this issue, the AAUP statement notes that there are responsibilities professors have in the classroom to cover certain material, whether dictated by curricular committees or by disciplinary standards. "If a professor of molecular biology has an idiosyncratic theory that AIDS is not caused by a retrovirus, professional standards may require that the dominant contrary perspective be presented. Understood in this way, the ideal of balance does not depend on a generic notion of neutrality, but instead on how particular ideas are embedded in specific disciplines," the report says.

But the AAUP goes on to suggest that emphasis on balance suggests falsely that there is always some neutral ideal about which there are clearly opposing sides that every student needs to understand. Too much counting for balance would remove the ability of professors to construct good courses, the statement warns. It notes that there is "a large universe of facts, theories, and models that are arguably relevant to a subject of instruction but that need not be taught. Assessments of George Eliot's novel *Daniel Deronda* might be relevant to a course on her *Middlemarch,* but it is not a dereliction of professional standards to fail to discuss *Daniel Deronda* in class. What facts, theories, and models an instructor chooses to bring into the classroom depends upon the instructor's sense of pedagogical dynamics and purpose."

Hostility. Critics of higher education say that too many professors are rude or vindictive to students who do not agree with their political views. Here the AAUP stated, as it has previously, that academic freedom should not be viewed as a license to mistreat students. "An instructor may not harass a student nor act on an invidiously discriminatory ground toward a student, in class or elsewhere," the statement says. "It is a breach of professional ethics for an instructor to hold a student up to obloquy or ridicule in class for advancing an idea grounded in religion, whether it is creationism or the geocentric theory of the solar system. It would be equally improper for an instructor to hold a student up to obloquy or ridicule for an idea grounded in politics, or anything else."

However, the statement warns of the danger of trying to protect students from professors' ideas, which may well differ significantly from those a student grew up with. "It is neither harassment nor discriminatory treatment of a student to hold up to close criticism an idea or viewpoint the student has posited or advanced. Ideas that are germane to a subject under discussion in a classroom cannot be cen-

sored because a student with particular religious or political beliefs might be offended. Instruction cannot proceed in the atmosphere of fear that would be produced were a teacher to become subject to administrative sanction based upon the idiosyncratic reaction of one or more students," the statement says.

Irrelevant politics. Finally, a criticism is that professors fill their lectures with political commentary that has nothing to do with the course. Here the AAUP again notes the responsibilities professors have to cover material in appropriate ways, and questions just how widespread this problem is. More serious, the AAUP suggests, is the danger of so regulating what professors say that they can't make logical connections for students between course content and whatever students may relate to.

"Might not a teacher of nineteenth-century American literature, taking up *Moby Dick,* a subject having nothing to do with the presidency, ask the class to consider whether any parallel between President George W. Bush and Captain Ahab could be pursued for insight into Melville's novel?" the statement asks. "Might not an instructor of classical philosophy, teaching Aristotle's views of moral virtue, present President Bill Clinton's conduct as a case study for student discussion? Might not a teacher of ancient history ask the class to consider the possibility of parallels between the Roman occupation of western Mesopotamia and the United States' experience in that part of the world two millennia later?"

The full text of the AAUP report is available at http://www.aaup.org/AAUP/comm/rep/A/class.htm. Reported in: insidehighered.com, September 11. ☐

pessimistic views on academic freedom

A greater percentage of social scientists today feel that their academic freedom has been threatened than was the case during the McCarthy era.

That finding—from Neil Gross, an assistant professor of sociology at Harvard University—was among a series of pessimistic papers presented at a forum on academic freedom at the annual meeting of the American Sociological Association. Gross surveyed social science professors last year about whether they felt their academic freedom was threatened, and found that about one-third did. In 1955, Paul Lazarsfeld, the late Columbia University professor, did a similar survey and found only one-fifth of professors feeling affected by attacks on their academic freedom.

There are many explanations for the increase, which may not mean an increase in the likelihood of a particular social scientist facing a threat to his or her academic freedom, Gross said. For example, more faculty members may be on the extremes of the political spectrum and thus be targets. Or people may be defining academic freedom in different ways. But regardless, he said, the one-third figure was "alarming." While attacks on academic freedom and intellectuals are nothing new in American history, he said, such attacks tend to be cyclical and the evidence suggests that we are in "an up cycle" in terms of such attacks.

Gross, who has done surveys of public opinion on attitudes about academic freedom, said one cause for the difficulties faced by academics today is the "disjuncture" between public and academic attitudes about academic freedom. He noted that a survey of the public for the American Association of University Professors last year found that solid majorities support tenure, but that many also believe that in some cases, colleges should be able to fire professors for political views such as belonging to the Communist Party or defending the rights of Islamic militants. Clearly, he said, the public doesn't understand academic freedom the way professors do.

Other speakers saw other reasons for concern about the state of academic freedom, which the sociology association recently created a committee to study. Lisa Anderson, a professor of international relations at Columbia University, said she likes to think of herself as an optimistic person, but finds herself worried that attacks on academic freedom are getting worse and are likely to continue along those lines. Anderson just finished ten years as dean of Columbia's School of International and Public Affairs, and the last few years of her tenure found her among the Middle Eastern studies scholars who were regularly criticized by some pro-Israel groups for alleged anti-Israel or anti-American bias. The attacks have "deeply damaged the research community," Anderson said.

Anderson said young scholars of Middle Eastern literature or history are finding themselves "grilled" about their political views in job interviews and, in some cases, losing job offers as a result of their answers. And she said universities are increasingly nervous about getting caught up in the debate. Outside groups critical of those in Middle Eastern studies, she said, are shifting the way scholarship is evaluated. "People are reading work not for what it says, but for who it serves," she said.

Those outside Middle Eastern studies should not assume they are immune, she said. Anderson pointed to the squelching by the Bush administration of research on climate change, and to the political attacks on evolution in several states, as examples of scholars being attacked for their views.

Cat Warren, associate professor of English at North Carolina State University, explored another issue—how definitions of academic freedom are changing in ways that she fears limit faculty rights. Warren pointed to this year's Supreme Court decision weakening federal laws governing election spending. While the decision was not explicitly about academic freedom, Warren said, it may end up defining it. That's because the Supreme Court accepted the idea

that money is free speech and limits on money in campaigns are the same as (unconstitutional) limits on free speech.

Warren cited a series of debates in academe—at the University of California over a major project in which the energy giant BP is providing $500 million for research and a discussion over proposed bans on tobacco industry support for research, and at North Carolina universities over proposed gifts from the John William Pope Foundation to support the study of Western civilization. In all of these debates, some faculty members objected to the outside funds, and in all of these cases, administrators and, in some instances, faculty groups cited academic freedom to justify taking the funds. Blocking the funds would block the free flow of ideas that would come from research or curricular projects supported by the funds, the argument goes.

The problem with that argument, Warren said, is that it views the money as speech alone. In all of these cases, she said, professors have had concerns about issues of academic integrity or the direction of the curriculum or university priorities—and felt that accepting the grants would in effect decide questions of policy that faculty should debate. The "pious language" about academic freedom, she said, has become a "great silencing mechanism" to limit faculty input. Reported in: insidehighered.com, August 15. ☐

AAP tones down language in anti-open-access lobbying campaign

The Association of American Publishers, reacting to criticisms leveled against its new anti-open-access lobbying effort, known as Prism, has rewritten some of the more contentious language on the campaign's Web site.

The association had introduced Prism, or the Partnership for Research Integrity in Science and Medicine, as what it called an effort to "safeguard the scientific and medical peer-review process." The new language does away with charged phrases like "what's at risk," "undermining the peer-review process," and "opening the door to scientific censorship." Instead, it now states that Prism "supports new approaches to access and new economic models that offer choices to suit diverse budgets and needs."

Prism, the updated version says, "was formed to advocate for policies that ensure the quality, integrity, and economic viability of peer-reviewed journals."

In what appears to be a nod to AAP members who are sympathetic to open access, it states that "publishers have been at the forefront in testing new models to expand access for subscribers and non-subscribers alike."

Several member presses, including Cambridge University Press, Columbia University Press, and Rockefeller University Press, had made it very clear that they did not support the message or stated mission of Prism.

James D. Jordan, president and director of the Columbia press, expressed his dismay by resigning from the executive council of the AAP's Professional/Scholarly Publishing division, and Stephen Bourne, chief executive officer of the Cambridge press, said his company had not been consulted on Prism.

At stake is federal legislation that would require research supported by the National Institutes of Health to be made publicly available through the National Library of Medicine's PubMed Central no later than twelve months after its initial publication in a peer-reviewed journal.

The old version of Prism's Web site stated that "policies are being proposed that threaten to introduce undue government intervention in science and scholarly publishing, putting at risk the integrity of scientific research." The new Prism language "expresses concerns about the unintended consequences of unfunded government mandates."

"Scholarly publishing is complex," it continues, "as are the issues surrounding the debate about federally mandated free access. Scholarly publishers themselves are not unanimous in their views on this topic, but all are united in their commitment to the advancement of science and the improvement of life through the wide dissemination of research results." Reported in: *Chronicle of Higher Education* online, September 18. ☐

SUPPORT THE FREEDOM TO READ

censorship dateline

libraries

Brookwood, Alabama

Fifteen-year-old Lysa Harding picked a book at random from Brookwood High's library for a book report. Now, she doesn't want to return it. Harding and her grandmother, Pam Pennington, said the book is too sexually explicit and shouldn't be on school library bookshelves at all. The school library won't allow her to check out another book until she returns this one, and that's not going to happen, they said.

"This book is sick," said Pennington. "I'm 50 years old and I've raised eleven sets of kids and been through many a library, and I've never seen a book like this in a school library before."

The novel, *Sandpiper,* by Ellen Wittlinger, tells the story of a 15-year-old girl named Sandpiper Hollow Ragsdale who is on a "sexual power trip and engages in random hookups" for oral sex, according to a review by the *School Library Journal*. Ragsdale befriends one boy, but then is abused by another. According to the review, the novel takes a bold stance on sexual relationships.

ALA's *Booklist* described the main character as a promiscuous teen with an unstable home life who has oral sex with multiple partners. The review goes on to say that the book takes on difficult teen issues "with candor, humanity, humor and grace."

Harding, however, believes the book goes into too much graphic detail for a high school crowd. "I honestly believe that it should not be at school, because at my school they teach abstinence and no sex before marriage, but then all the book is teaching is how to do those things," she said.

The book has been favorably reviewed and is intended for older teen readers, said Jane Smith, library media specialist for the Tuscaloosa County School system. "It's a cautionary tale for teenagers that oral sex is sex," Smith said. "You serve a wide range of people in a library and you have to have something for all of them."

The school system has a procedure to complain about the content of books, Smith said. But Pennington and Harding are standing behind their belief that the book is inappropriate for any school. They don't intend to return the book. Harding faces late fees or a $25 charge to replace the book if it's not returned.

"I feel that it is the most mature thing to do, to keep it off the shelves," she said. Pennington has lodged a complaint about *Sandpiper*. A committee will be formed to determine whether her complaints are valid, and whether the book should be pulled from the shelves. Pennington must make her complaints to that committee.

Smith said that if Pennington is not happy with the committee's recommendations, her next step would be to speak to Frank Constanzo, county schools superintendent, and the issue could eventually be put to a vote before the Tuscaloosa County Board of Education.

Pennington said she will take her granddaughter to the Green Pond Public Library to choose another book to write about. Reported in: *Tuscaloosa News*, September 11.

Chandler, Arizona

Patrons' complaints about the *Phoenix New Times* and comedian George Carlin's audio book, *When Will Jesus Bring the Pork Chops?* could have them yanked from library shelves if the Chandler Library Board agrees they're too racy, irreverent or politically incorrect for public consumption. Two other titles, a children's book about a racing sperm and a fairy tale DVD narrated by Robin Williams, may be moved out of the children's area because of parents' complaints.

The board heard details of the objections September 20 but won't make a decision until November, said library manager Brenda Brown. "It's serendipitous that this is happening before Banned Books Week," she said. During that week, the American Library Association promotes intellectual freedom and encourages people to read banned books.

Patricia Wira said she was shocked by Carlin's language on an audio book she checked out.

Kathleen Subia was distressed during a family library visit when her 7-year old daughter asked about a children's book picture of a naked man with an arrow pointing to his genitals. Subia is asking that the children's picture book, *Where Willy Went,* be moved from the children's area to a restricted parenting collection because Willy is a sperm and the book is about sex.

"We were spending a nice afternoon in the library and I don't like being forced into having a discussion about sex with my 7-year-old who was just learning to read,"

she said. Subia said her daughter picked up the book from a table and brought it to her mother with questions about pictures of naked adults, sperm and an arrow pointing to the man's genitals.

Chandler listens to patrons' complaints about material that's risqué or politically incorrect, but banning them isn't something the city takes lightly, Brown said. She said no items have been removed following complaints during her three years as manager, although several requests have been heard by the board. It is unusual for so many cases to come before the board at one time; there are usually only two or three a year, she said.

"It doesn't mean community values aren't important, but we have ethical responsibilities to support First Amendment rights," Brown said.

Resident Larry Edwards objected to *The Phoenix New Times* being on the shelves of the Hamilton Branch Library shared by Hamilton High school. Brown said he questioned the appropriateness of the alternative newspaper's advertisements and articles for teenagers. The newspaper is distributed free and is available to students elsewhere.

Wira said she is seeking removal of Carlin's audio book, *When Will Jesus Bring the Pork Chops?* because "this kind of sewer language shouldn't be available in a public library." She said she is a regular library visitor and listens to books on tapes during daily walks. "I'm not naive, but his language was horrible and the content was very anti-Catholic, anti-Christian."

The Phoenix Faerie Tale Theatre DVD by Shelly Duval is the subject of a complaint by resident Sandy Ashbaugh. Reported in: *Arizona Republic,* September 19.

Lewiston, Maine

A Lewiston woman wants to keep local children from seeing an acclaimed sex education book, *It's Perfectly Normal*. So she checked out copies from the Lewiston and Auburn public libraries. And she won't give them back.

"Since I have been sufficiently horrified of the illustrations and the sexually graphic, amoral abnormal contents, I will not be returning the books," JoAn Karkos wrote the local libraries in August. A check for $20.95 accompanied each letter to cover the cost of the book.

"This has never happened before," said Rick Speer, director of the Lewiston Public Library. "It is clearly theft." Though he sent back the check, along with a form Karkos could use to request the book's removal from library shelves, he may take action in court if she doesn't return what she borrowed. "That's really what we want," Speer said. "We want the book back."

In her second letter to Speer, Karkos cited a war on morality and called the volume "pornographic."

"The truth is the contents of the book in question leads to a lot of misery, pain, lack of freedom, and often death," Karkos wrote.

Written by Robie H. Harris and illustrated by Michael Emberley, the book was published in 1993. Subtitled "Changing Bodies, Growing Up, Sex & Sexual Health," the book features frank but cartoon-like illustrations of naked people in chapters on topics such as abstinence, masturbation and sexually transmitted diseases. According to its publisher, Massachusetts-based Candlewick Press, it has been sold in 25 countries and translated into 21 languages.

Planned Parenthood has championed the book, including an interview with the author on its Web site. But the book has been harshly criticized by conservative groups such as Concerned Women for America and the anti-abortion American Life League.

In 2005, the book topped the American Library Association's list of most challenged books. The list also included books by J.D. Salinger, Toni Morrison and Judy Blume.

In 23 years as a librarian, Speer said he has faced only two challenges. None was like this. Rosemary Waltos, the director of the Auburn Public Library, called Karkos' decision not to return the book "an inappropriate act." And it will likely be fruitless, Waltos said.

"If somebody wants a copy, they can get one," she said. At least three dozen Maine libraries have copies available for interlibrary loan, she said.

In the past six years—as far back as the Lewiston library keeps its records—the book has been checked out only 16 times. It was renewed 15 times. Both libraries have ordered replacements for the books Karkos took. In fact, since a local newspaper published a letter from Karkos condemning the book, requests have risen, so Speer ordered two more copies. Reported in: *Lewiston Sun-Journal,* September 18.

Kitchener, Ontario

The Waterloo Catholic District School Board should stop using a resource book that students never see because it presents homosexuality as "morally neutral," a group has claimed. Defend Traditional Marriage and Family objects to *Open Minds to Equality* because it could lead people "to reject scriptural teaching on homosexual acts," group spokesman Jack Fonseca told the board's family live advisory committee September 26.

"They will have been led to reject Jesus," Fonseca said.

The book is an optional resource teachers can use if, for example, they want to address objectionable things being said in class, said Catholic board spokesman John Shewchuk. The book was approved by the family life committee several years ago and kids never see it, Shewchuk added.

But even the fact teachers can use it is dangerous, Fonseca said. Many resources are secular and parents trust teachers to use them with discretion, committee chairwoman Cathy Sweeney said. But committee member Joann Schmalz said Catholic parents want their kids to be taught Catholic teachings, such as that sex is for procreation. Reported in: *Toronto Globe and Mail,* September 27.

Gillette, Wyoming

A school library book recently was challenged by a parent, so Campbell County School District officials are putting together a committee of community members to examine it. Sarah Forster has submitted a reconsideration request form asking that *The Shell Lady's Daughter* be removed from junior high school libraries.

"The teenagers in the book show such a lack of moral integrity," said Forster, a parent of three.

The 144-page book, written by C.S. Adler, is about a girl who unexpectedly finds herself while learning how to cope with her mentally ill mother. It was named Best Young Adult Book of the Year from the American Library Association in 1983.

Forster listed a gamut of what she referred to as "objectionable subjects": sexual relations between teenagers, sexual thoughts, promiscuity, masturbation, deceiving parents, suicide by overdosing on sleeping pills, suicide by drowning oneself and self-inflicted pain. Most of those subjects make brief appearances in the book, but Forster believes the references are inappropriate nonetheless.

"We need to teach girls to treasure their purity and that's going in the total opposite direction," she said.

Forster submitted an official book challenge form in April after her then fourth-grade daughter found the book on a teacher's shelf and read it during independent reading time. When Forster's daughter told her about some of the scenes, she read the book and requested that it be removed from elementary schools—a request that was granted.

She also wants the book out of Gillette's two junior high school libraries, where copies are still available for students to borrow—a request that the committee will consider in the coming weeks.

But Wagonwheel Elementary School's library/media specialist Mary Wegher stands behind the book as appropriate material for junior high students. "It's a good coming-of-age story about a girl who is dealing with a lot of issues that girls deal with at that age," she said. "We can't shelter our kids from reality. These are things that they are going to deal with in their life."

The more familiar kids are with those issues, the more prepared they'll be to handle them appropriately, Wegher said. But Forster said some kids haven't encountered the issues in the book, and she'd rather those who are not exposed stay that way.

Many parts of the book are subject to different interpretations. In one scene, for example, Kelly agrees to go into a treehouse with an older boy whom she doesn't know well. She knew that the boy's intentions weren't innocent, yet she went anyway—a decision that bothered Forster. But when the boy began undressing Kelly, she stopped him, told him she was only 14 and went home—a decision that Wegher saw as admirable.

Campbell County High School library/media specialist Georgia Lundquist said reading material in all the schools goes through a careful selection process: Librarians read various professional reviews of books and verify that they are age-appropriate before adding them to school shelves. It remains to be seen what the committee will decide. "I'm pretty confident that they will (remove the book)," Forster said. Reported in: *Gillette News-Record,* September 25.

schools

Guilford, Connecticut

The parents of a freshman student whose teacher resigned after he gave her a sexually explicit illustrated book said September 26 their daughter had been the target of harassment from fellow students, and they want the school district to do more to clarify the issue with other parents. The girl's father, who asked that his family remain anonymous because it has already been the target of criticism, described the graphic novel that English teacher Nate Fisher gave the student as "borderline pornography."

The book, one of a series of comic book novels by Daniel Clowes, is called *Eightball #22*. It includes references to rape, various sex acts and murder, as well as images of a naked woman, and a peeping tom watching a woman in the shower. "It's not even like a gray area," the father said. "It's clearly over the line."

He said Fisher gave the student the book to make up for a summer reading assignment. The book is not part of the school's regular curriculum. Her parents brought their concerns about the book to the high school and school district's administration, and Fisher resigned, a week after being placed on administrative leave.

Superintendent of Schools Thomas Forcella said the book was "inappropriate" for freshman students. The girl recently turned 14.

Forcella said the school district's investigation is closed now that Fisher has resigned. But the girl's father rejected that explanation, calling the school's acceptance of Fisher's resignation a "cop out."

"Now they don't have to worry about it," he said. "They can close the investigation, they're done with the matter and now they're out of a sticky situation."

Forcella said the district is planning to e-mail a statement that the girl was not at fault and post it on the school system's main Web site.

"I'm extremely upset with the administration for not following through with their word of contacting the parents," the father said. "It looks like we got some teacher fired (over) a Harry Potter novel or *Catcher in the Rye*."

The girl's mother said her daughter has been "crying every night" and asking not to go to school because students who liked the teacher are blaming her. The mother said that some students set up a group on Facebook, the social networking Web site, calling for Fisher to be reinstated and criticizing the student. The family called the police when, they said, a

video was posted on the site with a picture of their daughter and a song with the lyrics "Don't hesitate to exterminate." The Facebook page has since been removed.

"He's the cool, favorite teacher of all the kids," the father said. His wife said she became especially concerned when her daughter told her Fisher asked her "how the book made her feel," although the mother added that she has no idea "what his intention was."

"She was victimized by him to begin with and over and over again for 2½ weeks now," she said. "We just feel like if people understand what he had given her, then they would understand that it's not our daughter's fault."

Eightball #22 features a number of intersecting stories told in comic book form. Charles Brownstein, executive director of the Comic Book Legal Defense Fund in New York City, said that Clowes is a well known graphic novelist. Clowes is also the author of the graphic novel *Ghost World*, which was adapted into a feature film in 2001.

"The book was basically a profile of a town and its various oddball personalities and it was drawn in a wide variety of illustrative styles to create a psychological portrait of the goings on in this town," Brownstein said. "It certainly is not pornographic."

He added: "Frankly, I find the fact that somebody has left their job over this particular work deeply troubling." Brownstein said he thinks the nature of graphic novels—which combine images and text—and the relative youth of the genre can lead to confusion.

"Somebody could do a superficial glance of the material and not put the contextual pieces together, thereby perhaps seeing a panel with violence, perhaps seeing a panel with nudity and taking the image out of context as something that it's not," he said. "The more people are educated about the category, the less those sorts of misunderstandings occur." Reported in: *New Haven Register,* September 20.

Chicago, Illinois

Several dozen parents at a Southwest Side Chicago public school are calling for school officials to ban a controversial book they say is filled with references to sex and violence. *The Chocolate War,* by Robert Cormier, which is required reading for seventh grade students, was blasted by parents at a Local School Council meeting September 18 at the John H. Kinzie Elementary School in the Garfield Ridge neighborhood.

Nick Cortesi, who has a 2nd grader and a kindergartner at Kinzie, said school officials should remove the book because of its inappropriate content and adult themes. "I'll be damned if they are going to be reading this filth," Cortes said. "The issue is over whether it's age-appropriate. What about the parents who are tax payers? Have we no say?"

At the meeting, Kinzie Principal Sean Egan told about fifty parents who showed up in the school's cafeteria that he had informed public school administrators about their concerns and was told that officials thought the book was appropriate reading material. "I don't tell you how to run your family," Egan told parents. "I support my teachers."

After hearing from the district's lawyers, the principal sent a letter to parents informing them that the book would remain on the required reading list. He warned parents that if they directed their children not to read the book, it could "have a significant negative effect on the final course grade."

"This book was selected for the very important, complex themes it covers, including conformity and the ethical implications of choices we make," Egan wrote. "I want to assure you that the school has fully vetted this book. . . . A few parents have objected to the contents of the book, which addresses mature themes and contains some swearing. Decisions regarding the content of a school's curriculum, however, lie with its educators and administrators."

The young adult novel has been controversial since it was released in 1974 and is one of the most challenged books by parents and school officials nearly every year, according to the American Library Association. In 2006, it ranked as the 10th most challenged book for its depiction of swearing, masturbation and violence, library association officials said.

Thorpe Schoenle a 7th grade parent, said that soon after the school year began on September 4, he was informed that his daughter Ashley would read the book later this year. He said the school has been teaching the book for more than four years. He said that if seventh graders discuss the book outside of class, younger children could be exposed to the language and content.

"It's a grammar school," Schoenle said. "It's inappropriate for the age level. My fourth grader shouldn't have to hear them discuss it. . . . Why would you take [away] the rights of parents? It's a complete lack of respect for parents is what it is." Reported in: *Chicago Tribune,* September 20.

Oak Lawn, Illinois

Karen Lukes didn't think much about the book that her son randomly picked from a list of suggested summer reading compiled by teachers at Alsip Prairie Junior High. Frankly, she said, she was thrilled to see the 14-year-old crack a book during the break from school. But as the Oak Lawn mother began to read alongside her soon-to-be eighth-grader, she was stunned to discover that *Fat Kid Rules the World,* by K.L. Going, was laced with profanity and other mature content.

Now she wants School District 126 administrators to shelve the book for good. "I want it pulled," Lukes said. "It's vulgar, and it's a total contradiction. The kids can't go around and talk like this . . . What kind of message does it send?"

District 126 Superintendent Robert Berger stands by the award-winning selection as one of many books offered to students. All seventh- and eighth-graders at Prairie Junior High are required to read at least one book, preferably from the recommended summer reading list, before school begins. "These are standard pieces of literature used (in

schools) across the country," Berger said. "Appropriateness is for students and parents to judge."

Berger said two other parents complained about the book.

Fat Kid Rules the World chronicles the friendship between an angst-ridden teen named Troy and Curt, a homeless punk-rocker. The pair first cross paths as Troy contemplates throwing himself from a subway platform in a suicide attempt. The coming-of-age novel, which broaches mature subjects—from drug and alcohol use to adolescent sexual fantasies to ditching school—has been compared to J. D. Salinger's *The Catcher in the Rye*.

When it was published in 2003, *Fat Kid Rules the World* ranked on the "Best Books" list compiled by the *School Library Journal*. Going also received The Michael L. Printz award, which is sponsored by a publication of the American Library Association.

Despite its literary acclaim, Dan Marler—who also is a District 126 parent and the pastor of The First Church of God in Oak Lawn—questioned if the book is too mature for such an impressionable audience. "You're dealing with children. Isn't there some measure of what's appropriate?" he said. "On television there is. In movies there are."

Lukes acknowledged that it's ultimately up to parents to decide what's best for their children, but she said parents are supposed to be able to trust school officials to choose appropriate material. "No parent can go and read all six books to preview them," said Lukes, who planned to take her concerns to the school board. "I don't want the administration to endorse this . . . And I want some kind of commitment that they won't use it again," she said. Reported in: *Daily Southtown,* August 3.

Johnstown, Ohio

Some parents are urging officials in the Northridge School district to place a ban on a controversial book that is assigned to high school students. Michelle Doran and a few other parents are upset because students at Northridge High School are assigned to read *The Chocolate War,* a young adult novel written by Robert Cormier and published in 1974.

Doran, whose son was required to read the book last year as a freshman at Northridge, took issue with some of the book's passages, "Her breast brushing against his arm set him on fire," Doran recited. "If these books were a movie, they would be Rated R, why should we be encouraging them to read these books?"

Although *The Chocolate War* is regarded in some circles as one of the best young adult novels of all-time, it is no stranger to controversy, mostly due to sexual coming-of-age passages. According to ALA's list of books most challenged by schools, *The Chocolate War* cracks the top three.

District Superintendent John Shepard said the state sets standards that guide schools when choosing reading materials. "You always want to pick material as a classroom teacher that will probe thought into your students," Shepard said. "I think that's the goal of every educator—to get their students to think and learn." And while Shepard said his district is in line with the state's standards, he said he understands parent concerns.

"We are actually forming a committee of teachers and maybe one or two parents to sit on a panel to review the reading list we do have," Shepard said. While Shepard promised to look into those concerns, Doran maintained that children shouldn't be exposed to such content.

"I understand they want to have freedom as to what they want to teach, but who are they teaching?" she said. "They're teaching our children." Reported in: WBNS-10 TV, September 12.

student press

Medford, Massachusetts

Responding to a case involving controversial material that appeared in a student publication, the president of Tufts University said August 27 that the private institution will give its students, faculty and staff the same right to free expression as their peers at public institutions. But some say a concurrent ruling by a top administrator in that case sends a contradictory message.

In a written statement, Lawrence S. Bacow, the university's president, said that while Tufts isn't technically bound by First Amendment guarantees, "it is my intention to govern as president as if we were. Universities are places where people should have the right to freely express opinions, no matter how offensive, stupid, wrong headed, ill-considered or unpopular," he said in the note to students, faculty and staff. "To say that people have the right to express such views does not mean that we condone them or that they should go unchallenged. Rather, it means that the responsibility to respond is shared collectively by all members of the community and not vested in the action of any administrative body."

The remarks coincided with a decision by James Glaser, the university's dean of undergraduate education, to overturn part of a prior ruling regarding a student magazine's culpability in publishing two pieces that many found offensive.

Last academic year, *The Primary Source,* Tufts's journal of conservative thought, which is primarily funded with university resources, included a parody of a Christmas carol, titled "O Come all Ye Black Folk," a play on "O Come all Ye Faithful," that was meant to be a critique of affirmative action policies but was seen by many as racially insensitive. The other piece, published in response to Islamic Awareness Week, attempted to draw attention to a radical wing of Islam but was taken by some to imply that all Muslims were violent and intolerant.

Students and faculty protested the pieces, and editors apologized in the weeks and months after. Still, many backed the magazine's right to publish the material. Bacow

wrote an opinion piece in the student newspaper calling on students to respond to the remarks, which he called "offensive," with speech of their own.

The university's Muslim Student Association and a student brought complaints to the Committee on Student Life, a group of faculty and student representatives that hears complaints about the behavior and activities of student-run organizations. That committee determined in a May ruling that the publication was guilty of "creating a hostile environment, harassment and breaching community standards." As a result, it ruled that all future articles would need to be accompanied by bylines.

But Glaser overturned the byline provision in a ruling. "Imposing such a provision on one publication in the context of a judicial decision can only be construed as punishment of unpopular speech," he said.

The dean's ruling left intact the findings of the committee, including harassment charges. Bacow said that since Glaser's decision leaves open issues raised by the committee's decision, he would explain his views on freedom of expression at Tufts.

"During the McCarthy era, a number of university presidents in the United States failed to defend the principle of freedom of expression. Students, faculty, and staff paid for this equivocation as the government sought to purge college campuses of those expressing particularly unpopular opinions," he said in the letter. "We must be vigilant in defending individual liberties even if it means that from time to time we must tolerate speech that violates our standards of civility and respect."

Bacow added that with the exception of the recent committee decision, the university has operated as if the same rights apply to its students as do those at public institutions.

Elana Cohen-Khani, a Tufts senior who earlier this year wrote an opinion piece in the student paper supporting free speech protections, said she sees the president's statement as a strong signal that the university is serious about protecting the First Amendment.

Matthew Schuster, editor of *The Primary Source,* said that while the dean's ruling is a small step in the right direction, not overturning the entire committee ruling in essence affirms the notion that dissenting political expression can be harassment.

Daniel Halper, a Tufts junior who is outgoing chair of a student judicial board (which did not hear the case), said that while he agrees with the president's statement, the university should have overturned the entire decision. "We're getting contradicting messages from the administration," Halper said. "On the one hand, free speech is always protected. But on the other hand, by not retracting the entire decision, you're setting a dangerous precedent that the harassment charge is still on the table."

Kim Thurler, a university spokeswoman, said there is no suggestion that the announcements will have any impact on funding of the publication or any organization. By setting aside the byline requirement, the committee's decision remains "simply an opinion reached" based on interpretations of the student handbook.

Bacow said in his letter that it was a mistake to allow the committee to hear the case. Thurler added that future responsibility to respond to offensive speech will not be placed on a committee but by those who wish to share their views in a public forum. Reported in: insidehighered.com, August 28.

Charlottesville, Virginia

The University of Virginia's student newspaper found itself backpedaling in September after publishing a cartoon that spurred spontaneous protests by students who found it racially insensitive and inflammatory. The outcry culminated when between 100 and 200 students marched to the offices of *The Cavalier Daily* demanding an apology and the firing of the cartoonist.

Racial tensions are not necessarily a new problem at the campus and neither, for that matter, are controversial comic strips. A year ago, a pair of cartoons by the same artist, Grant Woolard, offended Christian groups and was eventually featured on The O'Reilly Factor, which garnered thousands of angry e-mails from viewers. The current uproar has so far remained a local issue at the university, which bears a legacy of discrimination as a result of Jim Crow and also has faced a more recent history of racially tinged incidents on campus.

The response was organized through word of mouth, text messages and Facebook by various concerned students and campus groups. "Once again, the *Cav Daily* has crossed the boundary, but this time will not go unnoticed. We need to organize and end this racism once and for all," wrote the creator of a Facebook group with nearly 300 members titled "THE CAV DAILY IS ABOUT TO BE FINISHED!!"

The cartoon in question, printed September 4, presents a scene of bald, dark-skinned men in loincloths throwing ordinary items such as a shoe and a chair at each other. The caption reads: "Ethiopian Food Fight." The newspaper retracted the cartoon that day and removed the image from its Web site. Although that cartoon was the immediate catalyst for student action, it came on the heels of another controversial strip the previous week, again by Woolard, that depicted Thomas Jefferson with a whip, standing before a black woman sitting on the bed (presumably Sally Hemings), who says, "Thomas, could we try role-play for a change?"

The editor of the paper, senior Herb Ladley, said it was a mixture of lapses in oversight and a failure to recognize that the "food fight" scene would be seen as controversial that resulted in the comic being published. "A lot of times we're just making snap judgments late at night . . . not really sitting down and reflecting on our policy like we should," he said. Normally, at least three sets of eyeballs see comic strips before they go to press, he explained: the graphics

editor, the operations manager and Ladley himself. But in this case, there was a difference: Woolard, the cartoonist, was also the graphics editor.

The current censorship policy, created in the wake of other controversies in 2006, was reiterated in an editorial in which the newspaper apologized for printing the cartoon: "First, does the author truthfully depict a verifiable historical or contemporary situation? If not, and the context of the work is creative, we ask two more questions. Does the author make a serious, intentional point, the censoring of which would constitute viewpoint discrimination? Also, does the author criticize or make light of a group of people for any reason other than their own opinions or actions?"

The editorial admitted that the work did not meet the last requirement. Ladley made a disctinction between satirizing people's beliefs that are subject to change—including religious beliefs—and "things people can't change," such as race and sexual orientation. The latter, he said, is not allowed under the policy.

Ladley said the paper will not accept submissions from Woolard "until further notice," but he declined to say whether the cartoonist would continue in his role as graphics editor.

Woolard posted a lengthy explanation on Facebook of his intent in drawing the "food fight" cartoon, apologizing "to those whom this comic has hurt." His comic strip, "Quirksmith," has also in the past sought humor in topics such as Hinduism and the Special Olympics.

"This was by no means intended to negatively portray Ethiopia or its people," Woolard wrote. "[T]he term 'food fight' was not meant to imply that the figures were fighting for food, but rather with food, as the common usage of the term suggests. In the most extreme cases of famine in many parts of the world, people have had to resort to eating what would otherwise be considered inedible in order to survive. . . . This surrealistic hypothetical situation invites the reader to realize that what initially appears to be a joke reflects a sobering reality."

While The Cavalier Daily is independent of the university, both administrators and editors expressed a willingness to work together to resolve the issue. Ultimately, the administration also expressed distaste for the publication of the cartoon, releasing an open letter that said, in part, "we expect better from its staff and editors than what appeared this past Tuesday." Reported in: insidhighered.com, September 10.

colleges and universities

Waco, Texas

Another controversy over the study of intelligent design is brewing at Baylor University. Officials at the institution in Waco have removed from the university's Web site a personal Web page created by Robert J. Marks, II, a professor of engineering, that outlined his work in an "evolutionary informatics" laboratory. A lawyer representing Marks said Baylor's actions amount to viewpoint discrimination and a suppression of his client's academic freedom.

A mirror site of the laboratory's Web page describes evolutionary informatics as merging the theories of evolution and information, and "investigating how information makes evolution possible."

Marks's chief collaborator in this research is William A. Dembski, who started a center for the study of intelligent design at Baylor in 1999. Members of Baylor's faculty strongly objected to the center, and it was eventually dismantled. Dembski is now a research professor in philosophy at the Southwestern Baptist Theological Seminary, also in Texas.

Marks, who is designated a distinguished professor of electrical and computer engineering at Baylor, conducted his evolutionary-informatics research on his own time. According to his lawyer, John Gilmore, Marks first met with university officials, including Charles Beckenhauer, Baylor's general counsel, to discuss the Web page. That meeting was called after Benjamin S. Kelley, dean of engineering and computer science, said he would be taking the Web page down after having received several e-mail complaints about it.

At that meeting, Marks agreed to terms outlined by Baylor to remove any wording on the Web page that implied that Marks's work in evolutionary informatics was associated with the university, Gilmore said. When those conditions were met, the evolutionary informatics page was to be allowed back online, he said. But after the meeting, Baylor officials asked for further changes beyond what both parties had agreed to, according to Gilmore, and the Web page remains offline.

"The university has imposed restrictions that we don't think any self-respecting professor would agree with," said Gilmore. "We're being treated this way because of the content on the Web site. They don't treat other faculty members this way in policing their personal Web sites."

"Fundamentally, as I understand it, this is a disagreement over what can be represented as a Baylor product, and what are the procedures by which such things are vetted and approved," said a Baylor representative, John M. Barry. "Some changes need to be made" to the Web page, he said, because the work it describes "is not something that belongs to Baylor." Reported in: *Chronicle of Higher Education* online, September 4.

broadcasting

Los Angeles, California

When a federal appeals court ruled last summer that broadcast networks were not responsible for censoring "fleeting expletives" uttered on television, Fox Television network hailed it as a victory for viewers, saying they could decide

themselves "what is appropriate viewing for their home."

But when some performers and award winners blurted out expletives on on Fox's broadcast of the 59th Primetime Emmys September 16—including one that came during antiwar comments—Fox censors hit the delete button, leaving viewers with confusing seconds of dead air and wondering whether the censorship was of language or of political views. Fox said it was only language.

Remarks by Sally Field and Ray Romano—and even an expletive of surprise, spoken away from a microphone by Katherine Heigl—were cut. Dead air replaced the words, and the video cut to a wide shot of the auditorium when performers were deemed by the Fox broadcast standards officials to have gone too far.

Like many live programs, the Emmys show was produced with a delay of several seconds between the live action and the broadcast, allowing network officials time to delete remarks considered offensive.

In a statement issued September 17, Fox Broadcasting said: "Some language during the live broadcast may have been considered inappropriate by some viewers. As a result, Fox's broadcast standards executives determined it appropriate to drop sound during those portions of the show."

The network declined to comment further. But a Fox executive, who spoke anonymously because he was not authorized to go beyond the official statement, said the network believed that the "fleeting expletives" ruling did not give Fox the right to forgo its responsibility to keep objectionable language off broadcast television.

The three instances of censoring were based solely on the use of profanities and not on the content of the remarks, the Fox executive said. Questions about whether Fox was censoring Field arose after a portion of her acceptance speech was cut.

Field used an expletive in saying that if mothers ruled the world, there would be no wars. She won the Emmy for her performance as Nora Walker, a liberal matriarch whose son is headed to Iraq for combat duty, on the ABC drama "Brothers & Sisters." Backstage after her acceptance, Field said she "would have liked to say more four-letter words up there."

But she added that she "probably shouldn't have said" the word that was censored. "If they bleep it, oh well, I'll just say it somewhere else," she said.

Romano was censored when he made a joke about his former television wife—Patricia Heaton, his co-star on "Everybody Loves Raymond"—and her new character's love affair with Kelsey Grammer's character on "Back to You," a Fox series that is to have its premiere this week. In doing so, Romano ignored Fox's plea to television critics not to reveal the characters' back story before the series's broadcast.

Perhaps the most surprising bit of censorship came as Heigl mouthed a curse word normally associated with frustration or disgust when she was announced as the winner of an Emmy for her role on ABC's "Grey's Anatomy." The word was not picked up by any microphones, but Fox nevertheless cut away so that viewers could not read Heigl's lips and be offended. Reported in: *New York Times,* September 18.

art

San Francisco, California

A controversial scroll in the exhibit Telling Tales at San Francisco's Asian Art Museum, has stirred controversy within the Korean community. It has also highlighted challenges the museum faces in drawing the line between art and history. The exhibit is tellingly situated between the museum's Japan and Korea sections. One enters the museum and ascends to the second floor. Passing through a display of Japan¹s artistic, religious, and military past, the visitor reaches the scroll in question, delicately placed between Japanese guns and Korean ceramics.

In the scroll, the Korean king kneels, hands clasped in a gesture of submission. Above him looms the Japanese empress, at the head of an armada and clad in full samurai armor with sword outstretched. His armies defeated and his lands occupied, the king swears his country¹s eternal loyalty to the Japanese throne.

Not long after the exhibit opened, a series of editorials appeared in the Korean-language *Korea Daily* calling on its readers to protest the display. Koreans responded by sending in hundreds of letters to the museum, including one from the Korean consulate.

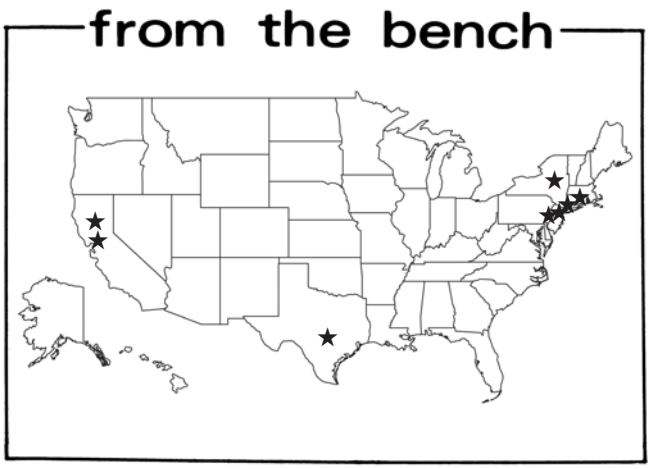
Young Kee Ju, editor of the *Korea Daily,* says that the exhibit is "problematic" because it "distorts the history of Korea¹s relationship with Japan." Although the painting is a piece of art, he says its antiquity lends its contents historical weight, particularly for viewers unaware of Korea's past. For this reason, his paper called on the scroll to be removed, a move the museum viewed as tantamount to censorship. Instead, the museum provided additional information, clarifying the historical context surrounding the scroll's fictional contents, which Ju found to be an appropriate resolution.

The dispute highlights the ongoing frustration of many Koreans who feel that Japan¹s perspective of Asia remains the dominant one in the West. Recently, a novel by Japanese author Yoko Kawashima Watkins was pulled from American classrooms following a wave of protests from Korean Americans who argued that the book conveyed a negative portrayal of Koreans under Japanese occupation. Issues of censorship arose, pitting artistic expression against historical representation.

These concerns are once again playing out through the Asian Art Museum's exhibit.

At nearly 20 feet in length, the scroll is impressive. It depicts the legendary sixth century Japanese Empress Jingu

(continued on page 269)



U.S. Supreme Court

On the first day of its new term each year, the U.S. Supreme Court typically agrees to hear a handful of cases but declines to consider hundreds more. On October 1, the justices turned aside several cases with implications for First Amendment law, letting stand appeals court rulings that, among other things, upheld the right of a public university to limit an uninvited preacher's ability to speak on its campus.

The cases were among scores on which the Supreme Court acted on the traditional first Monday in October, the opening day of its annual term. By refusing to hear a case, the high court lets stand the result of the last decision by a federal appeals court or, less typically, a state supreme court. Petitions to the Supreme Court are rarely granted, so those filing them tend to view them as a last-ditch effort, with relatively little chance of success.

In a case of specific interest to libraries, *Faith Center* v. *Glover,* the high court turned down an appeal by a church that argued its religious freedom had been violated when it was barred from holding worship services in a meeting room of the Contra Costa County library in Antioch, California. In a separate case, the court denied a hearing to two Oakland, California, employees who said the city had abridged their freedom of speech by removing a flyer they had posted promoting the "natural family" after other city workers founded a Gay and Lesbian Employees Association.

Conservative organizations joined the plaintiffs in both cases in urging the high court to grant reviews. The justices denied the appeals without comment.

In the library case, the court left intact a September 2006 ruling by a federal appeals court in San Francisco that said Contra Costa County was entitled to deny use of a community meeting room for prayer services by the Faith Center Church Evangelistic Ministries.

"The county has a legitimate interest in . . . excluding meeting room

activities that may interfere with the library's primary function as a sanctuary for reading, writing and quiet contemplation," and in preventing the room from being "transformed into an occasional house of worship," the U.S. Court of Appeals for the Ninth Circuit said in a 2-1 ruling.

Meeting rooms at the library have been used by community and political groups, including the Sierra Club and a local Democratic Party chapter. The county initially banned all religious activities in the rooms but modified its rules in December 2004, after the Faith Center filed suit to allow religious discussions. Worship services are still prohibited, however.

A federal judge ruled in favor of the church in May 2005 and issued a preliminary injunction against the county's policy, but no prayer meetings were held during the appeal.

The Bush administration entered the case on the side of the church in the fall of 2005, saying in written arguments to the appeals court that a policy allowing social and political groups to meet at the library, but barring worship services, violated the religious group's freedom of expression.

"Hymns and prayer are expressions among believers, and to observers, of their common faith," the Justice Department said in its brief to the Ninth Circuit. The administration did not file arguments with the Supreme Court.

A lawyer for the church said that he would present additional arguments in lower courts to try to get prayer services into the library room. The appeals court ruling "treats private religious expression as second-class speech," said attorney Jordan Lorence of the Alliance Defense Fund.

The Oakland suit was filed by two employees who founded a religious club, called the Good News Employee Association, in response to the formation of the Gay and Lesbian Employees Association in 2002.

The two employees, Regina Regerford and Robin Christy, put up a flyer on a bulletin board in January 2003 announcing formation of a "forum for people of faith" to express their views "with respect for the natural family, marriage and family values." A supervisor in the city's Community and Economic Development Department removed the flyer in response to an employee's complaint, saying it contained homophobic statements in violation of Oakland's ban on anti-gay harassment in city employment.

Chief U.S. District Judge Vaughn Walker dismissed a lawsuit by the two employees in 2005, saying the women

had other means of communicating their views, such as talking to co-workers during lunch breaks. The U.S. Court of Appeals for the Ninth Circuit upheld Walker's ruling in March, saying government agencies can restrict free speech in the workplace to maintain "the efficient operation of their office." The court noted that Regerford and Christy had not been punished and had been given the opportunity to submit a flyer with different wording. They declined to do so. Reported in: *San Francisco Chronicle,* October 2.

Lawyers for James G. Gilles—often known as Brother Jim—had more than the usual reason to hope that the justices might agree to hear their challenge to Vincennes University's policies on campus speech. The popular Web site SCOTUSBlog had identified the case of *Gilles* v. *Blanchard* as one of three "petitions to watch" in the court's initial set of decisions about which cases to hear, giving Nate Kellum, a lawyer for the Alliance Defense Fund, which represents Gilles, a "modest degree of confidence" that the preacher's appeal would be granted.

Gilles had argued that in barring Gilles's attempt to discuss "faith and other moral issues of the day" in a seemingly public place on the campus of the Indiana public university (requesting instead that he apply to appear in an area of the campus designated for "solicitation"), Vincennes had violated his First Amendment right to speak in what his lawyers deemed a "public forum." Kellum said that last February's decision by the U.S. Court of Appeals for the Seventh Circuit clashed with previous decisions in other federal circuits, another fact that can encourage the Supreme Court to decide to hear a particular challenge.

But in rejecting Gilles's appeal without comment, as is the court's custom, the justices seemingly endorsed the views expressed by the Seventh Circuit's ruling, which held that the university was within its rights to limit speech in non-public areas of its campus, and to limit speech on the lawn where Gilles sought to speak only to members of the campus community.

"The issue more simply posed is whether a university should be able to bar uninvited speakers under a policy that by decentralizing the invitation process assures nondiscrimination, and a reasonable diversity of viewpoints consistent with the university's autonomy and right of self-governance," Judge Richard A. Posner wrote for the three-judge panel. "We have tried to explain why the Constitution does not commit a university that allows a faculty member or student group to invite a professor of theology to give a talk on campus also to invite Brother Jim and anyone else who would like to use, however worthily, the university's facilities as his soapbox. To call the library lawn therefore a 'limited designated public forum' is an unnecessary flourish."

Duane Chattin, director of public information at Vincennes, said that the university was "pleased that the litigation has ended." The university, he said, "has believed all along that its regulations provided for the free expression of speech on campus, and certainly never intended to hamper the exercise of free speech. The Supreme Court's ruling on this bears that out."

Gilles has another roughly similar case pending before the U.S. Court of Appeals for the Sixth Circuit, involving an unsuccessful attempt to speak at Murray State University. Reported in: insidehighered.com, October 2.

The Federal Communications Commission has decided to seek Supreme Court review of a recent decision invalidating the agency's policy of citing broadcasters for fleeting expletives.

In asking the high court for an extension of the deadline to submit a request for review, U.S. Solicitor General Paul D. Clement said he has "decided to authorize the filing of a petition for a writ of certiorari in this case. The additional time sought in this application is necessary to permit the preparation and printing of the petition."

The solicitor general's office represents federal agencies before the Supreme Court, which is formally asked for review of a lower court decision via writs of certiorari.

In June, the U.S. Court of Appeals for the Second Circuit slapped the FCC for having unjustifiably instituted a policy of citing and fining broadcasters for fleeting expletives uttered on live shows—a case stemming from U2 frontman Bono's use of "fucking" on NBC's 2003 telecast of the Golden Globe Awards. The 1978 Supreme Court decision guiding FCC indecency policy exempted one-time profanities, acknowledging that broadcasters can't always catch everything, particularly when they don't know an expletive will be said.

The appeals court ruled that the FCC's shift in 2006 to begin citing broadcasters for fleeting expletives was not adequately explained or justified and therefore invalidated the policy. The court also barred the agency from implementing the policy until FCC lawyers provided sufficient explanation or justification.

Required to address cases on the simplest grounds first, the appeals court made its decision based only on procedural grounds and thus could not address constitutional issues that broadcasters raised in their briefs. However, the court's decision included a long section expressing doubt that even if the FCC could come up with a procedural explanation for the new policy, it would not withstand challenge on constitutional issues.

"It'll be interesting to see if the Supreme Court takes the case," said one industry lobbyist. "They usually don't take cases (decided on procedural grounds). If they do take it, I can't help but think it's because they will want to get to the constitutional issues, which is a good sign for broadcasters."

If the court takes the case, it will be the first—and, to many observers, a long-overdue—review of FCC indecency authority in almost thirty years. Reported in: *Variety,* September 27.

national security letters

New York, New York

A provision of the USA Patriot Act allowing the FBI to issue National Security Letters (NSLs) without court approval was deemed by a federal judge September 6 to violate the First Amendment. NSLs, which have been used to demand private information from libraries, telephone companies, internet service providers, and other data-gathering bodies, have been under scrutiny since a March internal FBI report detailing improper and illegal use by the Justice Department.

Although Congress amended the NSL provision during last year's Patriot Act reauthorization, Judge Victor Marrero of the U.S. District Court for the Southern District of New York ruled that the revision actually created additional constitutional problems. In his 106-page ruling, Marrero wrote that NSL recipients remain "effectively barred from engaging in any discussion regarding their experiences and opinions relating to the government's use" of the letters. The strains of persevering under such secrecy led to the high-profile lawsuit of the four librarians known as the "Connecticut John Does."

The current lawsuit was brought to federal court on behalf of an anonymous ISP by the American Civil Liberties Union, which asserted that the FBI's ability to demand records without obtaining court orders violated the concept of checks and balances. "As this decision recognizes, courts have a constitutionally mandated role to play when national security policies infringe on First Amendment rights," said Jameel Jaffer, director of ACLU's National Security Project. "A statute that allows the FBI to silence people without meaningful judicial oversight is unconstitutional."

The American Library Association and the Freedom to Read Foundation prepared an *amicus* brief—written by attorney Theresa A. Chmara, a partner in the Washington, D.C., office of law firm Jenner and Block—in support of the lawsuit.

The secrecy provisions are "the legislative equivalent of breaking and entering, with an ominous free pass to the hijacking of constitutional values," Marrero wrote. His strongly worded opinion amounted to a rebuke of both the administration and Congress, which had revised the act in 2005 to take into account an earlier ruling by the judge on the same topic.

Although a government appeal is likely, the decision could eliminate or sharply curtail the FBI's issuance of tens of thousands of national security letters (NSLs) each year to telephone companies, Internet providers and other communications firms. The FBI says it typically orders that such letters be kept confidential to make sure that suspects do not learn they are being investigated, as well as to protect "sources and methods" used in terrorism and counterintelligence probes.

The ruling followed reports this year by Justice Department and FBI auditors that the FBI potentially violated privacy laws or bureau rules more than a thousand times while issuing NSLs in recent years—violations that did not come to light quickly, partly because of the Patriot Act's secrecy rules.

"The risk of investing the FBI with unchecked discretion to restrict such speech is that government agents, based on their own self-certification, may limit speech that does not pose a significant threat to national security or other compelling government interest," Marrero said.

Anthony D. Romero, executive director of the American Civil Liberties Union, said the ruling "is yet another setback in the Bush administration's strategy in the war on terror and demonstrates the far-reaching efforts of this administration to use powers that are clearly unconstitutional."

Marrero's decision would bar the use of NSLs to demand data from electronic communications companies, a procedure that was the focus of the lawsuit. But the ruling appears to leave untouched the FBI's ability to demand bank records, credit reports and other financial data related to counterterrorism and other probes, because those authorities are covered by other statutes, according to legal experts.

Although the FBI has had the ability to issue NSLs for many years, the Patriot Act, enacted in October 2001, significantly relaxed the rules for using them while increasing the secrecy requirements. The result has been a surge in NSL requests, from fewer than 9,000 in 2000 to nearly 50,000 in 2005, according to Justice Department records.

Marrero's ruling marked the second time that he has struck down the Patriot Act's NSL provisions. In 2004, after the ACLU filed suit on behalf of the same plaintiff—an Internet service provider identified as John Doe—he ruled similarly that the NSL provisions were unconstitutional because they silenced recipients and gave them no recourse through the courts.

While a government appeal was pending, Congress passed legislation in 2005 aimed at solving the problems identified by Marrero. But the judge ruled that the revisions were not adequate and that under the new law, "several aspects . . . violate the First Amendment and the principle of separation of powers."

The new legislation essentially required the courts to go along with the gag orders as long as the FBI certified that the secrecy was justified. Marrero suggested in his decision that Congress could solve the problems by more sharply limiting the FBI's ability to silence recipients while allowing more oversight from the courts.

Marrero, who was appointed by President Bill Clinton in 1999, warned of "far-reaching invasions of liberty" when the courts refuse to set limits on government power. He pointed specifically to Supreme Court rulings that sanctioned the internment of Japanese Americans in World War II and upheld racial segregation in schools and other public accommodations.

Most lawmakers were quiet about the ruling. Sen. Russell Feingold (D-WI), the only senator to vote against the original Patriot Act in 2001, said in a statement, "Congress needs to fix the mess it created when it gave the government overly-broad powers to obtain sensitive information about Americans."

Justice Department and FBI officials have strongly defended their use of NSLs and say they have implemented numerous reforms to lower the number of privacy violations. Administration officials have also characterized the letters as a crucial method of quickly obtaining information in the early stages of an investigation.

Kenneth Wainstein, head of the Justice Department's National Security Division, told the House intelligence committee earlier this year that NSLs are "important building blocks in national security investigations, and we must continue [to] use them if we are to be successful at heading off the threat of international terrorism in the United States." Reported in: *American Libraries* Online, September 7; *Washington Post,* September 7.

student press

Novato, California

The California Supreme Court rejected the Novato school district's challenge September 12 to a ruling that upheld a high school journalist's right to write an anti-immigrant editorial and affirmed California's strong legal protections for students' free speech. The justices unanimously denied review of an appeal by the Novato Unified School District, which was told by a lower court that it had violated the student's rights by yanking copies of the school newspaper out of circulation and telling parents that the editorial shouldn't have been published.

The student, Andrew Smith, wrote an editorial in the Novato High School newspaper in November 2001 saying any Latino who couldn't speak English was probably an illegal immigrant and should be taken in for questioning. After hearing complaints, the principal held an assembly for parents and students, then ordered the remaining issues removed from circulation and sent a letter to parents saying the editorial violated school standards and shouldn't have run.

Smith said he was physically attacked on campus soon afterward. He was not disciplined by the school for the editorial and continued writing for the newspaper. He now attends community college in Santa Rosa, his lawyer said.

His suit sought $1 in nominal damages and a declaration that the school district had violated his rights. A Marin County judge rejected Smith's claims but was overruled May 21 by the First District Court of Appeal in San Francisco. "A school may not prohibit student speech simply because it presents controversial ideas and opponents of the speech are likely to cause disruption," Justice Linda Gemello said in the 3-0 ruling.

The court relied on a 1971 California statute, the nation's first state law to protect free speech in public schools. The law says students are entitled to freedom of speech and of the press unless what they say is obscene or libelous, or creates a "clear and present danger" of lawbreaking or disorder on campus.

Speech that is provocative remains protected, Gemello said, unless the speaker calls for a disturbance, or "the manner of expression (as opposed to the contents of the ideas) is so inflammatory that the speech itself provokes the disturbance."

Gemello said Smith's editorial was written in a "disrespectful and unsophisticated manner" but contained no direct provocation or racial epithets. The ruling said the California law is a stronger shield for student expression than the constitutional protections recognized by the U.S. Supreme Court.

The nation's high court has ruled that students have free-speech rights, but has also allowed school officials to remove material they considered inappropriate from student newspapers. In June, the court upheld the suspension of an Alaska high school student who unfurled a banner reading "Bong Hits 4 Jesus" outside the school grounds, a message that Chief Justice John Roberts said could be reasonably interpreted as promoting illegal drug use.

"The (U.S.) Supreme Court is moving away from protection of student speech on high school campuses, and the California courts seem to be moving in the opposite direction," said attorney Paul Beard of the Pacific Legal Foundation, which represented Smith.

The Novato school district argued that the state law wasn't intended to go beyond the federal standard and should be interpreted to let school authorities decide whether a statement is likely to incite disruption. The appeals court ruling "greatly curtails the ability of school administrators to deal with incidents of violence which may be caused by students exercising their free-speech rights," Dennis Walsh, the district's lawyer, said in court papers. Reported in: *San Francisco Chronicle,* September 13.

colleges and universities

New Haven, Connecticut

The Solomon Amendment, which threatens to withhold federal funds from institutions that limit military recruiters' access to campuses, has won another round in court, and the only remaining push against it may have suffered a fatal blow in September when a federal appeals court upheld the constitutionality of the controversial measure.

Last year, the U.S. Supreme Court ruled unanimously that the Solomon Amendment did not infringe on the First Amendment rights of law schools that objected to it in protest of the military's ban on gay people. While Supreme Court rulings on specific laws generally settle matters, a group of Yale University faculty members had a separate challenge

to the Solomon Amendment and they won in federal district court, where they focused on the First Amendment protections for academic freedom. The Pentagon appealed that ruling, but the case was on hold during the Supreme Court review. Some critics of the Solomon amendment hoped they had an argument that might work, but the U.S. Court of Appeals for the Second Circuit disagreed.

The appeals court ruled that the Supreme Court's decision last year "almost certainly" rejected the academic freedom argument put forth by the professors. And if it didn't, the appeals court found that the argument "lacks merit."

On the question of whether last year's ruling covered the academic freedom argument, the appeals court noted that—even if not addressed explicitly in the decision—there is evidence that the justices were aware of the argument and were not moved by it. Briefs filed in the case raised the issue, the appeals court said. And the Supreme Court decision noted attempts by critics of the Solomon Amendment "to stretch a number of First Amendment doctrines well beyond the sort of activities these doctrines protect."

Thus it is "much more likely than not" that the Supreme Court rejected the academic freedom argument, the appeals court said.

On the merits of the argument, the Yale professors didn't fare much better. They had argued that their academic freedom was being violated when they are forced to allow discriminatory employers (in this case the military) to have access to the campus for recruiting. Allowing such discrimination, the professors said, interfered with their academic goals of having a diverse student body and promoting equal justice among their students.

But the appeals court said these arguments went beyond the academic freedom protections the Supreme Court has enshrined. Those protections, the appeals court said, focus on protecting "the marketplace of ideas."

Unlike the kinds of measures the Supreme Court would see as infringing on academic freedom, "the relationship between barring military recruiters and the free flow of ideas is much more attenuated," the appeals court ruled.

"The Solomon Amendment places no restriction on the content of teaching, the membership of teachers in organizations, the selection of students, or evaluation and retention of students," the appeals court said. Requiring universities to allow military recruiters on campus "may incidentally detract from the academic mission of inculcating respect for equal rights," the appeals court said. But the requirement does so "in a much less direct and more speculative way" than policies that would be barred by First Amendment protections for academic freedom, the court said. Reported in: insidehighered.com, September 19.

New York, New York

Public colleges' anti-bias policies have been taking a beating in the courts in recent years. Various federal courts have said the policies can't be used to deny recognition to Christian student groups—even if those groups explicitly discriminate against those who are gay or who don't share the faith of the organizations.

Many lawyers who advise colleges, even some who deplore these rulings, have urged colleges to recognize that the force of their anti-bias policies has been severely weakened. Students' First Amendment rights of freedom of religion and expression will end up trumping strong anti-bias principles, or so the emerging conventional wisdom has gone.

But an unusual decision from a federal appeals court on September 13 is challenging that conventional wisdom. The decision upheld the right of a public college—the College of Staten Island, of the City University of New York—to deny recognition to a fraternity because it doesn't let women become members. In ruling as it did, the U.S. Court of Appeals for the Second Circuit found that the college's anti-bias rules served an important state function—and a function that was more important than the limits faced by a fraternity not being recognized.

In a statement that some educators view as long overdue from the courts, the Second Circuit said that a public college "has a substantial interest in making sure that its resources are available to all its students."

Further, and this is important because many college anti-bias policies go beyond federal requirements, the court said it didn't matter that federal law has exceptions for fraternities and sororities from gender bias claims. "The state's interest in prohibiting sex discrimination is no less compelling because federal anti-discrimination statutes exempt fraternities," the court said.

Some legal experts viewed the ruling as a blip—a result perhaps of unusual circumstances in the case, or a trio of judges who happened to see the issue in a different way. An appeal is almost certain. But rulings by federal appeals courts become law in their regions and precedents that can be cited everywhere. And some lawyers, especially those trying to defend college anti-bias laws, said that the decision could be significant.

In the new ruling, "the court is saying there's no question but that the government has a substantial interest in eradicating discrimination and it recognizes that non-discrimination policies that condition funding interfere [with students' rights] only to a limited degree, and that's exactly the issue in our case," said Ethan P. Schulman, a lawyer for the University of California Hastings College of Law.

A federal judge ruled last year that Hastings was within its rights to deny recognition to the campus chapter of the Christian Legal Society, which barred from the group students who engage in "unrepentant homosexual conduct." Based on other rulings, the Christian group has appealed, but Schulman said the Second Circuit's finding showed that colleges should not abandon tough anti-bias policies (as many have, when faced with similar legal challenges).

"Ultimately it may well be that the U.S. Supreme Court is going to have to decide these issues," Schulman said. "But right now I think it's a mistake for colleges and universities to assume that they should abandon strongly held policies of non-discrimination."

With so much potentially at stake, there is some irony about the origins of the case at a CUNY campus. CUNY colleges generally don't house students, and Greek systems, to the extent they exist at all, are small and off campus. The lawsuit challenging CUNY's anti-bias rules was filed by a new branch of Alpha Epsilon Pi, which was seeking recognition as an official student organization at the College of Staten Island. Such status would, among other things, allow the group to receive funds, publicize and hold events on campus, obtain a campus mailbox. The fraternity's members said their organization didn't permit the inclusion of women, and that adding women would alter the nature of the group. Fraternity leaders testified that having women as members might lead to romance and "inevitable jealousies." Even lesbians could be problematic, the fraternity said, because having a female member is "an issue itself."

The fraternity sued CUNY, arguing that its rejection of the chapter on grounds of sex discrimination violated its right to "associative freedom" under the First Amendment. That argument carried the day at the district court level, which issued an injunction against enforcement of the anti-bias rule.

But the appeals court found that the fraternity was claiming associative rights (which offer some protection to groups with common beliefs and interests) while opening many of its events to non-members. In essence, the appeals court found that the fraternity members couldn't claim to be selective about who they hang out with, while boasting about how open an organization they have created. Further, the court noted that the fraternity was free to meet off campus with its own money—and that the college had legitimate reason to enforce its anti-bias rules.

In just about every way, this take differed from the analysis applied by a federal appeals court last year in a case over the right of the Christian Legal Society to be recognized at Southern Illinois University. In that case, an appeals court found that the society's right to religious freedom and free expression were violated by a university ban on support for groups that discriminated against gay people.

"CLS's beliefs about sexual morality are among its defining values; forcing it to accept as members those who engage in or approve of homosexual conduct would cause the group as it currently identifies itself to cease to exist," said that decision. "What interest does SIU have in forcing CLS to accept members whose activities violate its creed other than eradicating or neutralizing particular beliefs contained in that creed?"

Timothy M. Burke, a lawyer who wrote a brief for the court on behalf of the North American Interfraternity Conference, called the decision "surprising and frankly disappointing." He said he hoped that the fraternity in Staten Island would win on appeal, perhaps by stressing its Jewish roots to win some of the protection courts have granted to Christian fraternities. But Burke acknowledged that most fraternities and sororities couldn't make a religious claim.

"There has not been a huge clamor out there to change a system that's been in place for well over 150 years," he said. Further, the fact that fraternities and sororities were specifically exempted from federal gender bias laws shows that there is a broad consensus that their single-sex status shouldn't be challenged, he said.

Attacking fraternities at public universities is especially unfair, Burke said, in light of the 1972 Supreme Court decision in *Healy* v. *James* that upheld the right of Students for a Democratic Society to be recognized as an official group at public campuses. "It's a simple argument," he said. "If the SDS has to be recognized, then organizations like Chi Omega and Sigma Pi ought to have that right."

Schulman, the lawyer for Hastings, said he thinks part of the reason the Second Circuit's ruling will matter is that other courts are starting to advance similar arguments. He cited a ruling last month by the U.S. Court of Appeals for the Ninth Circuit that upheld the right of a Washington State high school that rejected a religious group's quest for recognition. The court—in a case being appealed—ruled that the group was appropriately rejected under the school district's anti-bias policies because of religious limits on who could vote or hold office.

Groups that want organizations at public universities to be able to discriminate against gay people or non-Christians have been trying to argue that the issue was settled by the Southern Illinois case or a few other cases, Schulman said. While he acknowledged that some court decisions have gone that way, he said that the two recent appeals courts rulings were equally significant. "I think the issues posed by these cases are still very much in play," he said. "It's too early for either side to declare or predict victory." Reported in: insidehighered.com, September 17.

Austin, Texas

The Texas Supreme Court ruled August 31 that the state could not require seminaries to meet certain standards as a condition of calling themselves seminaries and awarding certain degrees. The court ruled that the state regulation amounted to a violation of the religious freedom of three seminaries that challenged the regulations.

"A secular educator's meat may be a religious educator's poison, and vice versa. Standards that improve the quality of secular education while impairing sectarian education discriminate against religion," said the decision.

While the decision was praised by the seminaries, others worry that it will give diploma mills a new way to evade state authority. The regulations in question in Texas—which apply to secular private education as well, and which were not challenged in that regard by the suit or the court—were

part of a broad strategy to make it difficult for diploma mills to operate.

The decision means that "any person who creates any church can issue any degree in what sounds like a religious subject," said Alan Contreras, administrator of the Oregon Office of Degree Authorization, and a leading expert on state regulation of colleges. "Any employer must now assume that unaccredited seminary degrees issued in Texas are diploma-mill degrees unless the school can prove otherwise, and accept the potential liability of hiring such a person."

But the decision was praised by advocates for seminaries. Kelly Shackelford, chief counsel for the Liberty Legal Institute, which represented the seminaries in the case, issued this statement: "This decision is a huge victory for all seminaries not only in Texas but nationwide. The state has no authority or competence to control the training of pastors and ministers, and the Supreme Court rightly held so."

The case dates to 1999, when the Tyndale Theological Seminary was fined $173,000 for violating a provision of the Texas Education Code barring institutions from calling themselves a college, university, medical school or seminary and awarding degrees unless the institutions have a "certificate of authority" from the Texas Higher Education Coordinating Board, or are recognized by an approved accrediting agency. The provision in the code applies to all private institutions of higher education, secular and religious. Tyndale has a campus in Fort Worth and also operates in several other states and online. It is a seminary based on the belief in Biblical inerrancy and its degrees are all religious—in Biblical studies, theology, divinity and so forth, from associate degree to Ph.D.

Tyndale sued Texas and was joined in the suit by two other seminaries: the Hispanic Bible Institute and the Southern Bible Institute. All three argued that the state regulation violated their religious freedom. Their suit was narrow in that it did not challenge the use of the regulations with regard to secular institutions or to religious institutions that offer a mix of religious and secular education. The suit applied only to institutions where all education is religious in nature, and the Supreme Court noted in its ruling that its decision was only on that subset of education.

The Texas Supreme Court's decision—written by Justice Nathan L. Hecht—noted that the requirements institutions must meet to receive a certificate of authority from the state are detailed. They include provisions about faculty qualifications, general education, and the ability of institutions to carry out the stated objectives of the degrees they offer. Institutions also are required to support academic freedom and to have "sufficient distinction" between the roles of boards, administrators and faculty members to assure an appropriate level of "independence" for those who teach at the institutions.

In defending the standards, Texas officials noted repeatedly that none of the rules were specific to religious institutions, and that they were applied equally to all those wishing to offer degrees in the state.

But the Texas Supreme Court rejected that argument. "The fact that subchapter G [the relevant part of the Education Code] burdens all private postsecondary institutions does not lessen its significant, peculiar impact on religious institutions offering religious courses of study," the court ruled. "Subchapter G requires a clear, public, instantly identifiable differentiation between a religious education that meets the Coordinating Board's standards and one that does not: only an institution that meets those standards may call itself a seminary and its graduates associates, bachelors, masters, doctors, and the like. But setting standards for a religious education is a religious exercise for which the state lacks not only authority but competence, and those deficits are not erased simply because the state concurrently undertakes to do what it is able to do—set standards for secular educational programs. The state cannot avoid the constitutional impediments to setting substantive standards for religious education by making the standards applicable to all educational institutions, secular and religious."

The decision also cited several specific parts of the code that the court found to be unconstitutional attempts to tell a religious college how to operate. For example, the court said that the references to academic freedom were inappropriate because they were "inconsistent with a doctrinal statement like Tyndale's that is at the core of its mission."

It is also wrong for the state to set requirements for faculty qualifications or force a college to have some general education when regulating seminaries, the court ruled. "It is one thing for the state to require that English majors in a baccalaureate program take science or math courses, that they be taught by professors with master's degrees from accredited institutions, and that professors have the freedom to teach that the works sometimes attributed to Shakespeare were really written by Edward de Vere, Christopher Marlowe, Francis Bacon, or Queen Elizabeth I," the court said.

"It is quite another for the state to require that a religious institution's baccalaureate-level education in religion include psychology courses, or that preaching or evangelism or missions be taught only by professors with master's degrees instead of practitioners from the field, or that a school's faculty have the freedom to teach that the Bible was not divinely inspired, contrary to the school's tenets of faith."

While no complete dissent was filed in the case, one opinion that was a partial concurrence and a partial dissent took issue with much of the logic of the decision, and found problematic only the regulation of the word "seminary." This opinion, by Chief Justice Wallace B. Jefferson, said that the decision exaggerated the problems with some state oversight of religious institutions, and noted that the state has some regulatory oversight of religious broadcasters or of clergy who perform marriages—without apparent problems.

The chief justice also noted that the relevant state regulations provide some exceptions whereby an institution might be able to receive recognition if it could show that the only requirements it wasn't meeting related to matters of

faith. Further, he noted that the regulations did not prevent any group from offering any education it wanted, and issuing a statement that a graduate of its program had learned certain things. The only limit was publicly stating that the person had earned a degree, the opinion said.

The chief justice in fact raised questions about whether the ruling in the case amounted to inappropriate favoritism for some religious colleges. "Requiring non-religious higher-education institutes to comply with the accreditation scheme while exempting religious institutions would result in unequal treatment of the two, an impermissible advancement of religion," he wrote.

"The regulatory oversight at issue here is designed to ensure that all educational institutions—religious and secular alike—comport with minimum educational standards for issuing degrees. Subchapter G governs a secular matter: the creation of a system that recognizes certain types of postsecondary educational achievement. Accreditation signals not the approval of the school's message, but a certification that the institution meets a variety of educational standards, and any institution—religious or otherwise—may apply for authorization to issue degrees." Reported in: insidehighered.com, September 4.

Internet

Queensbury, New York

A Web site that sells materials stating that individuals can legally stop paying taxes has been shut on the order of a federal judge.

Judge Thomas J. McAvoy, a senior judge in the Northern District of New York who issued the order August 9, wrote that the First Amendment did not protect the two organizations that operate the Web site, or their founder, because the site incited criminal conduct. Judge McAvoy ruled that some people who went to the Web site stopped paying taxes, causing the government harm.

Judge McAvoy also ordered that the names, addresses, telephone numbers, e-mail addresses and Social Security numbers of every person who received materials on how to stop paying taxes be turned over to the government. This information would make it easy for the Internal Revenue Service to identify people who followed the illegal advice and for the Justice Department to prosecute them for tax crimes.

The civil court order is one of at least 245 permanent injunctions obtained by federal prospectors that prohibit individuals and organizations that deny the legitimacy of the tax laws or who sell tax evasion schemes from marketing their wares.

Robert L. Schulz of Queensbury, N.Y., the founder of both organizations behind the Web site—the We The People Foundation for Constitutional Education and the We The People Congress—posted the court order at the Web site givemeliberty.org, and closed the rest of the site even though he said that the order did not specify that he do so. He also said he had filed an appeal with the United States Court of Appeals for the Second Circuit.

His organization rose to prominence with a series of full-page newspaper ads, starting in 2001, asserting that the government tricks people into paying taxes. The ads solicited donations, which it said were fully tax-deductible.

Judge McAvoy, quoting from a declaration that Schulz sent to the court, said that Schulz wrote that he started "operation stop withholding" as "a national campaign to instruct company officials, workers and independent contractors on how to legally stop wage withholding."

In a 25-page decision, the judge wrote that "undisputed evidence" established that Schulz and his organizations "knew, or had reason to know, that their statements were false." He said that because Schulz was taking $20 payments for a package of materials that supposedly showed how to legally stop paying taxes, the Web site could be shut down as commercial speech that urged criminal conduct.

Even if the Web site was not commercial in nature, Judge McAvoy said, it could be shut because people who followed the advice at the Web site engaged in criminal conduct. "The First Amendment does not protect speech that incites imminent lawless action," the judge wrote, citing a 1969 Supreme Court decision.

Because Schulz and his organization "are not merely advocating, but have gone the extra step in instructing others how to engage in illegal activity and have supplied the means to do so" the judge added, "their speech may be enjoined." Reported in: *New York Times,* August 30.

child pornography

Delaware County, Pennsylvania

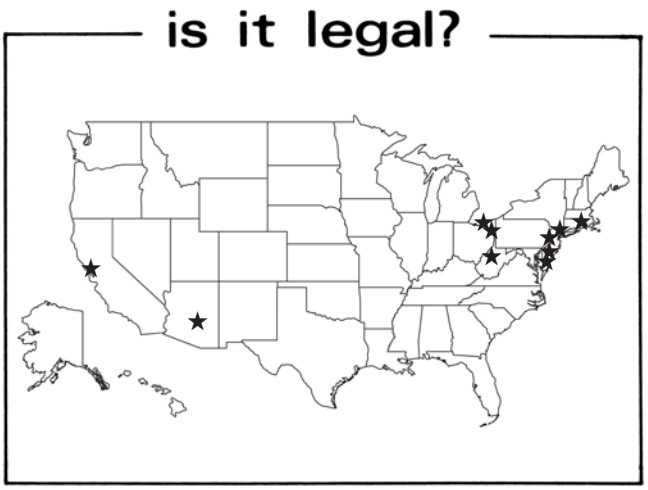
The Pennsylvania Superior Court has ruled that a man who viewed child pornography on his computer, but didn't save the images, could be charged with possession of child pornography.

A 7-2 en banc Superior Court panel in *Commonwealth* v. *Diodoro* reversed a prior three-judge panel that found there was not sufficient evidence to show Anthony Diodoro downloaded or saved the images of child pornography he viewed.

In the latest majority opinion, Judge Correale F. Stevens said the provision of the Crimes and Offenses Code, which prohibits the possession of child pornography, clearly states that anyone who "possesses or controls" child pornography is guilty of a third-degree felony. Diodoro, who freely admits that he viewed at least thirty images of child pornography, argued that he never possessed them.

"[Diodoro's] actions of operating the computer mouse, locating the Web sites, opening the sites, displaying the

(continued on page 267)



library

Bloomingdale, New Jersey

The borough of Bloomingdale filed a lawsuit August 3 in state Superior Court over its public library's refusal to provide the names and addresses of all its users. The borough council wanted demographic information on patrons so that it could close the library and negotiate a less expensive contract with neighboring Riverdale to provide library services. However, Bloomingdale Free Public Library Director Theresa J. Rubin declined to provide the names without a court order, citing the state law on confidentiality of library records.

The borough council originally contended that it had final authority over the library, which it wanted to close in order to get around a state law that requires a fixed amount of property taxes to go toward municipal libraries. After resistance from library trustees and other advocates, the council agreed August 14 to allow voters in November to decide whether to keep the library or seek an outside contract.

In the proposed 2007 municipal budget, property owners would have to pay a dedicated library tax of $323,000 to keep the library open. The borough had earlier contemplated a contract with Riverdale that would only cost $136,000 for the first year.

"There's nothing in the library statutes that gives the mayor and council or any other agency the power to dictate to the trustees what they're going to do and what they're not going to do," said library attorney Michael Cerone. "That to me is the definition of autonomy."

In the lawsuit, Bloomingdale officials cited an exception to the state confidentiality law that allows disclosure when the "records are necessary for the proper operation of the library." But New Jersey Library Association Executive Director Patricia Tumulty contends the meaning is unclear. "There are very few court cases to define this law in any significant manner," Tumulty said, adding that libraries will always ask to see a subpoena before releasing patron records. Reported in: *American Libraries* Online, August 24.

school

Chandler, Arizona

School officials suspended a 13-year-old boy for sketching what looked like a gun, saying the action posed a threat to his classmates. The boy's parents said the drawing was a harmless doodle and school officials overreacted.

"The school made him feel like he committed a crime. They are doing more damage than good," said the boy's mother, Paula Mosteller. The drawing did not show blood, bullets, injuries or target any human, the parents said. And the boy said he didn't intend for the picture to be a threat.

Administrators of Payne Junior High in Chandler suspended the boy August 20 for five days but later reduced it to three days. The boy's father, Ben Mosteller, said that when he went to the school to discuss his son's punishment, school officials mentioned the seriousness of the issue and talked about the massacre at Colorado's Columbine High School, where two teenagers shot and killed 12 students, a teacher and themselves in 1999. Mosteller said he was offended by the reference.

Chandler district spokesman Terry Locke said the crude sketch was "absolutely considered a threat," and that threatening words or pictures are punishable. Reported in: *USA Today,* August 22.

church and state

Washington, D.C.

Plans by a Christian group to send an evangelical video game to U.S. troops in Iraq were abruptly halted August 14 by the Department of Defense after ABC News inquired about the program. Operation Start Up (OSU) Tour, an evangelical entertainment troupe that actively proselytizes among soldiers, will not be sending the "apocryphal" video game in care packages as planned, according to the department.

"Left Behind: Eternal Forces" was inspired by Tim LaHaye and Jerry Jenkins' best-selling book series about the battle of Armageddon, in which believers of Jesus Christ fight the Antichrist. The game has inspired controversy

among freedom of religion advocates since it was released last year.

"It's a horrible game," said the Rev. Timothy Simpson of the Christians Alliance for Progress. "You either kill or convert the other side. This is exactly how the Osama bin-Ladens of the world have portrayed us."

Troy Lyndon, the producer of the game, said the game's "warfare" is not violent, and that it emphasizes "spiritual battles" over fighting with guns. The game gives incentives to recruit believers instead of killing the forces of the Antichrist, according to Lyndon. Lyndon added, "There is no forcible conversion to Christianity, and killing is never an objective in any of the 40 missions in the game."

OSU Tour is one of the newest members of the Defense Department's America Supports You program, which connects citizens and corporations with members of the military and their families at home and abroad. OSU Tour's entertainment aims to help military children and families become stronger through faith-based entertainment, according to its Web site. Sports personalities, comedians and actors make up the show.

OSU president Jonathan Sprinks came under fire from bloggers for writing on his Web site, "We feel the forces of heaven have encouraged us to perform multiple crusades that will sweep through this war-torn region," about OSU Tour's planned trip to Iraq. "We'll hold the only religious crusade of its size in the dangerous land of Iraq."

This statement was removed from Sprinks' site but can be viewed on the cached page.

The Defense Department's only comment on the record was that the OSU Tour is "currently not planning on sending any care packages to the troops in Iraq." In addition to the game, OSU Tour's "Freedom Packets" were supposed to include pocket-sized editions of the New Testament, evangelical DVDs and books, baby wipes and phone cards, according to its Web site. Reported in: ABC News, August 15.

Ocean Grove, New Jersey

An Ocean Grove church group is suing New Jersey, saying that the state is pressuring it to allow a civil union ceremony for a lesbian couple at its oceanfront pavilion, thereby violating the group's First Amendment rights.

The suit, filed with United States District Court in August came after the group, the Ocean Grove Camp Meeting Association, turned down a request in June by Harriet Bernstein and Luisa Paster of Ocean Grove to hold a civil union ceremony in the Boardwalk Pavilion on September 30. The couple subsequently filed a discrimination complaint with the New Jersey Division on Civil Rights against the Camp Meeting Association, a Methodist organization that owns the pavilion and all the town's land.

"We're trying to get the federal court to issue a declaration of the rights the Ocean Grove Camp Meeting possess," said Brian Raum, senior counsel for the Alliance Defense Fund, a family and church rights legal organization that is representing the Methodist group. "We feel they have the right to use their facilities for functions that are consistent with their beliefs."

Following up on the complaint by Bernstein and Paster, the Division on Civil Rights, part of the state attorney general's office, began an investigation. By opening a case file, the association's suit claims the state has violated the church's First Amendment rights "by subjecting this patently religious entity to an illegal investigation and threat of prosecution under the law," and causing a chilling effect on the group's rights to "unfettered religious expression, association and free exercise of religion."

Lee Moore, a spokesman for the attorney general's office, called the lawsuit "premature" since findings from the inquiry have yet to be issued. "The Division on Civil Rights has a duty to investigate any charges of discrimination filed with it, and the agency does so in response to nearly 1,300 formal complaints a year," Moore said, adding that his office's attempts at mediation between the parties had been unsuccessful.

The crux of the argument will rest on the definition of the building in question. An open-air structure that faces the ocean, the Boardwalk Pavilion is used for Sunday worship services, which are typically attended by 500 to 600 people throughout the summer, and for daily Bible classes. Situated on the Boardwalk in Ocean Grove, a busy Monmouth County beach town, the pavilion is also used by members of the public, who regularly sit on the pews to rest or get out of the sun. The building had been used for wedding ceremonies until recently.

Shortly after the civil union law took effect in February the group stopped offering the pavilion for weddings in large part to avoid potential conflicts, Scott Hoffman, the church association's chief administrative officer, said. "Just because of its location, it doesn't necessarily look like a church in the traditional fashion, but it is," Hoffman said.

But those who consider the pavilion a public place argue that the Methodist group is out of line in blocking these ceremonies. "This is public property by virtue of its public use for many decades," said Steven Goldstein, chairman of Garden State Equality, a gay rights advocacy group.

Stuart Rabner, who was then the attorney general, specified in a letter offering advice on applying the rules for New Jersey's civil union law that those who regularly performed marriage ceremonies may be compelled to perform civil unions under the state's antidiscrimination laws, but that clergy members could decline if performing such ceremonies would conflict with "sincerely held religious beliefs."

According to a charter granted by the state in the 1870s, all of the land in Ocean Grove, a mile-square section of Neptune Township, as well as the Boardwalk, the beach and 1,000 feet into the ocean is owned by the Camp Meeting Association. In recent years, Ocean Grove has also become one of the state's most gay friendly communities and the

two populations have coexisted peaceably. But with the filing of the lawsuit, and the Camp Meeting Association's hiring of the Alliance Defense Fund, some gay activists see that relationship changing.

"By enlisting one of the most radical groups in the country to represent it, the Ocean Grove Camp Meeting Association has declared war not only on New Jersey's gay community, but on the progressive values of millions of people in this state," Goldstein said. Reported in: *New York Times,* August 14.

government surveillance

San Francisco, California

Three federal appeals court judges hearing challenges to the National Security Agency's surveillance programs appeared skeptical of and sometimes hostile to the Bush administration's central argument August 15: that national security concerns require that the lawsuits be dismissed.

"Is it the government's position that when our country is engaged in a war that the power of the executive when it comes to wiretapping is unchecked?" Judge Harry Pregerson asked a government lawyer. His tone was one of incredulity and frustration.

Gregory G. Garre, a deputy solicitor general representing the administration, replied that the courts had a role, though a limited one, in assessing the government's assertion of the so-called state secrets privilege, which can require the dismissal of suits that could endanger national security. Judges, he said, must give executive branch determinations "utmost deference."

"Litigating this action could result in exceptionally grave harm to the national security of the United States," Garre said, referring to the assessment of intelligence officials.

The three judges, members of the United States Court of Appeals for the Ninth Circuit, were hearing arguments in two lawsuits challenging the highly classified surveillance programs, which the administration says are essential in fighting international terrorism. The appeals were the first to reach the court after dozens of suits against the government and telecommunications companies over NSA surveillance were consolidated last year before the chief judge of the federal trial court in San Francisco, Vaughn R. Walker.

The appeals concern two related questions that must be answered before the merits of the challenges can be considered: whether the plaintiffs can clearly establish that they have been injured by the programs, giving them standing to sue; and whether the state secrets privilege requires dismissal of the suits on national security grounds.

Though the questions are preliminary, the impact of the appeals court's ruling may be quite broad. Should it rule for the government on either ground, the legality of the r programs may never be adjudicated.

All three judges indicated that they were inclined to allow one or both cases to go forward for at least limited additional proceedings before Judge Walker. The two cases deal with different secret programs, but are broadly similar. One, a class action against AT&T, focuses mainly on accusations that the company provided the NSA its customers' phone and Internet communications for a vast data-mining operation. The lawyers in the AT&T case call that program, which the government has not acknowledged, a "content dragnet."

The second case, brought by an Islamic charity and two of its lawyers against the government, concerns a program disclosed by the *New York Times* in December 2005, which the administration calls the Terrorist Surveillance Program. The program, which has since been submitted to a secret court's supervision, bypassed court warrants in monitoring international communications involving people in the United States.

In July, another federal appeals court, in Cincinnati, dismissed a suit brought in Detroit by the American Civil Liberties Union, saying the plaintiffs there, including lawyers and journalists, could not prove they had been injured by this latter program.

Lawyers in the two cases that were argued in San Francisco say they have such proof. In the AT&T case, the plaintiffs submitted a sworn statement from a former technician for the company who disclosed technical documents about the installation of monitoring equipment at an AT&T Internet switching center in San Francisco.

Garre, representing the administration, and Michael K. Kellogg, a lawyer for AT&T, said the sworn statement was built on speculation and inferences. Robert D. Fram, a lawyer for the plaintiffs, said the statement provided more than enough direct evidence to allow the case to go forward.

Similarly, in the case brought by the charity, al-Haramain Islamic Foundation, the plaintiffs say the government mistakenly provided them a document, since reclaimed, that proves they were subject to surveillance without court approval.

On August 15, Thomas M. Bondy, a Justice Department lawyer, told the court that the document "to this day remains totally classified." In both cases, the government said the plaintiffs' evidence was insufficient to establish standing to sue, adding that even litigating the matter would endanger national security. "Whether plaintiffs were subjected to surveillance is a state secret," the Justice Department said in a recent brief in the Haramain case, "and information tending to confirm or deny that fact is privileged."

One of the judges on the panel, M. Margaret McKeown, seemed to endorse a lower court finding that the wiretap program was no longer secret. "We know quite a lot" about the Terrorist Surveillance Program, said Judge McKeown, who, like the third judge on the panel, Michael Daly Hawkins, was appointed by President Bill Clinton.

Judge Pregerson, appointed by President Jimmy Carter, appeared irritated with the government's arguments, and he became frustrated when Garre said he could not provide

simple answers to questions about the scope of a recently amended 1978 law, the Foreign Intelligence Surveillance Act. Garre said it was a complicated law.

"Can't be any more complicated than my phone bill," Judge Pregerson said. Reported in: *New York Times,* August 16.

Washington, D.C.

Broad new surveillance powers approved by Congress in August could allow the Bush administration to conduct spy operations that go well beyond wiretapping to include—without court approval—certain types of physical searches on American soil and the collection of Americans' business records, Democratic Congressional officials and other experts said.

Administration officials acknowledged that they had heard such concerns from Democrats in Congress recently, and that there was a continuing debate over the meaning of the legislative language. But they said the Democrats were simply raising theoretical questions based on a harsh interpretation of the legislation.

They also emphasized that there would be strict rules in place to minimize the extent to which Americans would be caught up in the surveillance.

The dispute illustrates how lawmakers, in a frenetic, end-of-session scramble, passed legislation they may not have fully understood and may have given the administration more surveillance powers than it sought. It also offers a case study in how changing a few words in a complex piece of legislation has the potential to fundamentally alter the Foreign Intelligence Surveillance Act, a landmark national security law. The new legislation is set to expire in less than six months; two weeks after it was signed into law, there is still heated debate over how much power Congress gave to the president.

"This may give the administration even more authority than people thought," said David Kris, a former senior Justice Department lawyer in the Bush and Clinton administrations and a co-author of *National Security Investigation and Prosecutions,* a new book on surveillance law.

Several legal experts said that by redefining the meaning of "electronic surveillance," the new law narrows the types of communications covered in the Foreign Intelligence Surveillance Act, known as FISA, by indirectly giving the government the power to use intelligence collection methods far beyond wiretapping that previously required court approval if conducted inside the United States. These new powers include the collection of business records, physical searches and so-called "trap and trace" operations, analyzing specific calling patterns.

For instance, the legislation would allow the government, under certain circumstances, to demand the business records of an American in Chicago without a warrant if it asserts that the search concerns its surveillance of a person who is in Paris, experts said.

It is possible that some of the changes were the unintended consequences of the rushed legislative process just before the summer Congressional recess, rather than a purposeful effort by the administration to enhance its ability to spy on Americans.

"We did not cover ourselves in glory," said one Democratic aide, referring to how the bill was compiled.

But a senior intelligence official who has been involved in the discussions on behalf of the administration said that the legislation was seen solely as a way to speed access to the communications of foreign targets, not to sweep up the communications of Americans by claiming to focus on foreigners.

"I don't think it's a fair reading," the official said. "The intent here was pure: if you're targeting someone outside the country, the fact that you're doing the collection inside the country, that shouldn't matter." Democratic leaders have said they plan to push for a revision of the legislation as soon as September. "It was a legislative over-reach, limited in time," said one Congressional Democratic aide. "But Democrats feel like they can regroup."

Some civil rights advocates said they suspected that the administration made the language of the bill intentionally vague to allow it even broader discretion over wiretapping decisions. Whether intentional or not, the end result—according to top Democratic aides and other experts on national security law—is that the legislation may grant the government the right to collect a range of information on American citizens inside the United States without warrants, as long as the administration asserts that the spying concerns the monitoring of a person believed to be overseas.

In effect, they say, the legislation significantly relaxes the restrictions on how the government can conduct spying operations aimed at foreigners at the same time it allows authorities to sweep up information about Americans. These new powers are considered overly broad and troubling to some Congressional Democrats who raised their concerns with administration officials in private meetings recently.

"This shows why it is so risky to change the law by changing the definition" of something as basic as the meaning of electronic surveillance, said Suzanne Spaulding, a former Congressional staff member who is now a national security legal expert. "You end up with a broad range of consequences that you might not realize."

The senior intelligence official acknowledged that Congressional staff members had raised concerns about the law in the recent meetings, and that ambiguities in the bill's wording may have led to some confusion. "I'm sure there will be discussions about how and whether it should be fixed," the official said.

Vanee Vines, a spokeswoman for the office of the director of national intelligence, said the concerns raised by Congressional officials about the wide scope of the new legislation were "speculative." But she declined to discuss specific aspects of how the legislation would be

enacted. The legislation gives the director of national intelligence, Mike McConnell, and Attorney General Alberto R. Gonzales broad discretion in enacting the new procedures and approving the way surveillance is conducted. Bush administration officials said the new legislation, which amends FISA, was critical to fill an "intelligence gap" that had left the United States vulnerable to attack.

The legislation "restores FISA to its original and appropriate focus—protecting the privacy of Americans," said Brian Roehrkasse, Justice Department spokesman. "The act makes clear that we do not need a court order to target for foreign intelligence collection persons located outside the United States, but it also retains FISA's fundamental requirement of court orders when the target is in the United States."

The measure, which President Bush signed into law on August 5, was written and pushed through both the House and Senate so quickly that few in Congress had time to absorb its full impact, some Congressional aides say.

Though many Democratic leaders opposed the final version of the legislation, they did not work forcefully to block its passage, largely out of fear that they would be criticized by President Bush and Republican leaders during the August recess as being soft on terrorism.

Yet Bush administration officials have already signaled that, in their view, the president retains his constitutional authority to do whatever it takes to protect the country, regardless of any action Congress takes. At a tense meeting with lawyers from a range of private groups active in the wiretapping issue, senior Justice Department officials refused to commit the administration to adhering to the limits laid out in the new legislation and left open the possibility that the president could once again use what they have said in other instances is his constitutional authority to act outside the regulations set by Congress.

At the meeting, Bruce Fein, a Justice Department lawyer in the Reagan administration, along with other critics of the legislation, pressed Justice Department officials repeatedly for an assurance that the administration considered itself bound by the restrictions imposed by Congress. The Justice Department, led by Ken Wainstein, the assistant attorney general for national security, refused to do so, according to three participants in the meeting. That stance angered Fein and others. It sent the message, Fein said in an interview, that the new legislation, though it is already broadly worded, "is just advisory. The president can still do whatever he wants to do. They have not changed their position that the president's Article II powers trump any ability by Congress to regulate the collection of foreign intelligence."

Brian Walsh, a senior legal fellow at the conservative Heritage Foundation who attended the same private meeting with Justice Department officials, acknowledged that the meeting—intended by the administration to solicit recommendations on the wiretapping legislation—became quite heated at times. But he said he thought the administration's stance on the president's commander-in-chief powers was "a wise course."

"They were careful not to concede any authority that they believe they have under Article II," Walsh said. "If they think they have the constitutional authority, it wouldn't make sense to commit to not using it."

Asked whether the administration considered the new legislation legally binding, Vines, the national intelligence office spokeswoman, said: "We're going to follow the law and carry it out as it's been passed."

President Bush issued a so-called signing statement about the legislation when he signed it into law, but the statement did not assert his presidential authority to override the legislative limits.

At the Justice Department session, critics of the legislation also complained to administration officials about the diminished role of the FISA court, which is limited to determining whether the procedures set up by the executive administration for intercepting foreign intelligence are "clearly erroneous" or not.

That limitation sets a high bar to set off any court intervention, argued Marc Rotenberg, executive director of the Electronic Privacy Information Center, who also attended the Justice Department meeting.

"You've turned the court into a spectator," Rotenberg said. Reported in: *New York Times,* August 19.

Washington, D.C.

The U.S. government is collecting electronic records on the travel habits of millions of Americans who fly, drive or take cruises abroad, retaining data on the persons with whom they travel or plan to stay, the personal items they carry during their journeys, and even the books that travelers have carried, according to documents obtained by a group of civil liberties advocates and statements by government officials.

The personal travel records are meant to be stored for as long as fifteen years, as part of the Department of Homeland Security's effort to assess the security threat posed by all travelers entering the country. Officials say the records, which are analyzed by the department's Automated Targeting System, help border officials distinguish potential terrorists from innocent people entering the country.

But new details about the information being retained suggest that the government is monitoring the personal habits of travelers more closely than it has previously acknowledged. The details were learned when a group of activists requested copies of official records on their own travel. Those records included a description of a book on marijuana that one of them carried and small flashlights bearing the symbol of a marijuana leaf.

The Automated Targeting System has been used to screen passengers since the mid-1990s, but the collection of data for it has been greatly expanded and automated since 2002, according to former DHS officials.

Officials defended the retention of highly personal data on travelers not involved in or linked to any violations of the law. But civil liberties advocates alleged that the type of information preserved by the department raises alarms about the government's ability to intrude into the lives of ordinary people. The millions of travelers whose records are kept by the government are generally unaware of what their records say, and the government has not created an effective mechanism for reviewing the data and correcting any errors, activists said.

The activists alleged that the data collection effort, as carried out now, violates the Privacy Act, which bars the gathering of data related to Americans' exercise of their First Amendment rights, such as their choice of reading material or persons with whom to associate. They also expressed concern that such personal data could one day be used to impede their right to travel.

"The federal government is trying to build a surveillance society," said John Gilmore, a civil liberties activist in San Francisco whose records were requested by the Identity Project, an ad-hoc group of privacy advocates in California and Alaska. The government, he said, "may be doing it with the best or worst of intentions. . . . But the job of building a surveillance database and populating it with information about us is happening largely without our awareness and without our consent."

Gilmore's file included a note from a Customs and Border Patrol officer that he carried the marijuana-related book *Drugs and Your Rights*. "My first reaction was I kind of expected it," Gilmore said. "My second reaction was, that's illegal."

DHS officials said that the government is not interested in passengers' reading habits, that the program is transparent, and that it affords redress for travelers who are inappropriately stymied. "I flatly reject the premise that the department is interested in what travelers are reading," DHS spokesman Russ Knocke said. "We are completely uninterested in the latest Tom Clancy novel that the traveler may be reading."

But, Knocke said, "if there is some indication based upon the behavior or an item in the traveler's possession that leads the inspection officer to conclude there could be a possible violation of the law, it is the front-line officer's duty to further scrutinize the traveler." Once that happens, Knocke said, "it is not uncommon for the officer to document interactions with a traveler that merited additional scrutiny."

He said that he was not familiar with the file that mentioned Gilmore's book about drug rights, but that generally "front-line officers have a duty to enforce all laws within our authority, for example, the counter-narcotics mission." Officers making a decision to admit someone at a port of entry have a duty to apply extra scrutiny if there is some indication of a violation of the law, he said.

The retention of information about Gilmore's book was first disclosed in Wired News. Details of how the ATS works were disclosed in a Federal Register notice last November. Although the screening has been in effect for more than a decade, data for the system in recent years have been collected by the government from more border points, and also provided by airlines—under U.S. government mandates—through direct electronic links that did not previously exist.

The DHS database generally includes "passenger name record" (PNR) information, as well as notes taken during secondary screenings of travelers. PNR data—often provided to airlines and other companies when reservations are made—routinely include names, addresses and credit-card information, as well as telephone and e-mail contact details, itineraries, hotel and rental car reservations, and even the type of bed requested in a hotel.

The records the Identity Project obtained confirmed that the government is receiving data directly from commercial reservation systems, such as Galileo and Sabre, but also showed that the data, in some cases, are more detailed than the information to which the airlines have access.

Ann Harrison, the communications director for a technology firm in Silicon Valley who was among those who obtained their personal files, said she was taken aback to see that her dossier contained data on her race and on a European flight that did not begin or end in the United States or connect to a U.S.-bound flight.

"It was surprising that they were gathering so much information without my knowledge on my travel activities, and it was distressing to me that this information was being gathered in violation of the law," she said.

James P. Harrison, director of the Identity Project and Ann Harrison's brother, obtained government records that contained another sister's phone number in Tokyo as an emergency contact. "So my sister's phone number ends up being in a government database," he said. "This is a lot more than just saying who you are, your date of birth."

Edward Hasbrouck, a civil liberties activist who was a travel agent for more than fifteen years, said that his file contained coding that reflected his plan to fly with another individual. In fact, Hasbrouck wound up not flying with that person, but the record, which can be linked to the other passenger's name, remained in the system. "The Automated Targeting System," Hasbrouck alleged, "is the largest system of government dossiers of individual Americans' personal activities that the government has ever created."

He said that travel records are among the most potentially invasive of records because they can suggest links: They show who a traveler sat next to, where they stayed, when they left. "It's that lifetime log of everywhere you go that can be correlated with other people's movements that's most dangerous," he said. "If you sat next to someone once, that's a coincidence. If you sat next to them twice, that's a relationship."

Stewart Verdery, former first assistant secretary for policy and planning at DHS, said the data collected for ATS should be considered "an investigative tool, just the way we do with law enforcement, who take records of things for

future purposes when they need to figure out where people came from, what they were carrying and who they are associated with. That type of information is extremely valuable when you're trying to thread together a plot or you're trying to clean up after an attack."

Homeland Security Secretary Michael Chertoff in August 2006 said that "if we learned anything from September 11, 2001, it is that we need to be better at connecting the dots of terrorist-related information. After September 11, we used credit-card and telephone records to identify those linked with the hijackers. But wouldn't it be better to identify such connections before a hijacker boards a plane?" Chertoff said that comparing PNR data with intelligence on terrorists lets the government "identify unknown threats for additional screening" and helps avoid "inconvenient screening of low-risk travelers."

Knocke, the DHS spokesman, added that the program is not used to determine "guilt by association." He said the DHS has created a program called DHS Trip to provide redress for travelers who faced screening problems at ports of entry. But DHS Trip does not allow a traveler to challenge an agency decision in court, said David Sobel, senior counsel with the Electronic Frontier Foundation, which has sued the DHS over information concerning the policy underlying the ATS. Because the system is exempted from certain Privacy Act requirements, including the right to "contest the content of the record," a traveler has no ability to correct erroneous information, Sobel said.

Zakariya Reed, a Toledo firefighter, said in an interview that he has been detained at least seven times at the Michigan border since fall 2006. Twice, he said, he was questioned by border officials about "politically charged" opinion pieces he had published in his local newspaper. The essays were critical of U.S. policy in the Middle East, he said. Once, during a secondary interview, he said, "they had them printed out on the table in front of me." Reported in: *Washington Post,* September 22.

visas

Boston, Massachusetts

The American Civil Liberties Union sued the federal government September 25 to try to force it to allow a senior South African academic to enter the United States.

The scholar, Adam Habib, has been barred from entering since last fall, when he was detained at a New York airport and deported after arriving for a series of academic meetings. This past spring he applied for a new visa, in hope of attending the annual meeting of the American Sociological Association in New York, in August, where he had been invited to speak on a presidential panel. U.S. consular authorities never responded to his request.

Habib, deputy vice chancellor of research, innovation, and advancement at the University of Johannesburg, is one of a growing number of foreign scholars whom the Bush administration has barred from entering the United States. Like many of the others, he had been a frequent visitor before being designated undesirable. Like almost all the rest, he has never been given any explanation.

But his supporters believe he was excluded because of his views. The American-educated academic has been a prominent critic in South Africa of the U.S.-led war in Iraq and certain aspects of the "war on terrorism." Habib is a Muslim of Indian descent.

The government is acting illegally and unwisely in keeping Mr. Habib out, according to Melissa Goodman, a staff lawyer with the American Civil Liberties Union's National Security Project. "When the government excludes scholars who have been invited to speak here—especially when they've had no problem traveling here in the past but have been vocal critics of U.S. policy in recent years—it sends the cowardly message that we are afraid of their ideas," she said.

The ACLU filed the lawsuit in the U.S. District Court in Boston on behalf of organizations that have invited Professor Habib to speak in the United States in the near future. Those include the American Sociological Association, the American Association of University Professors, the American-Arab Anti-Discrimination Committee, and the Boston Coalition for Palestinian Rights.

In a statement, the American Sociological Association said that decisions to bar Habib and other scholars "undermine the willingness of numerous scientists and academics from many nations to visit the United States and collaborate with their American colleagues."

The lawsuit names Secretary of State Condoleezza Rice and Secretary of Homeland Security Michael Chertoff as defendants, and seeks the immediate processing of Professor Habib's pending visa application. According to a statement from the group, the lawsuit also "seeks a declaration that his exclusion without explanation since October 2006 violates the First Amendment rights of U.S. organizations, citizens, and residents" to hear the scholar's views.

The State Department generally doesn't comment on individual cases. But Karl E. Duckworth, a department spokesman, said that U.S. authorities "do not make visa decisions based on [an applicant's] political leanings."

In 2006, the ACLU filed a similar lawsuit against the government on behalf of U.S. academic groups and Tariq Ramadan, a Swiss scholar of Islam and one of Europe's leading Muslim figures. He had been unable to take up a faculty position at the University of Notre Dame in 2004 when the administration revoked his visa at the last moment.

That lawsuit forced the government to provide a reason for Ramadan's exclusion; the authorities said it was because of donations equivalent to about $800 that he had made to two European groups providing humanitarian assistance to the Palestinians. The two groups were later blacklisted by the Bush administration for allegedly pro-

viding "material support" to Hamas, the senior partner in the Palestinian Authority.

Ramadan, a frequent visitor to the United States up to 2004, has still not been allowed back in, and the legal challenge on his behalf continues.

In October 2006, Habib arrived at John F. Kennedy International Airport in New York as part of a delegation from South Africa's Human Sciences Research Council, where he was at the time director of the program in democracy and governance. He had been scheduled to meet with officials of the National Institutes of Health, the Centers for Disease Control and Prevention, and the World Bank, and with scholars at both Columbia University and the City University of New York, where he earned his Ph.D.

He was detained for seven hours and interrogated about his associations and political views, he said, before being escorted by armed guards onto a flight back to South Africa. Several weeks later, the United States revoked the visas of Habib's wife and children.

In a statement issued through the ACLU, Habib said "I am deeply disappointed that a country like America has treated me in this way when I have done nothing wrong. If the U.S. continues to act in an undemocratic way, refusing to allow in outsiders who disagree with administration policy, it will continue to alienate large portions of the world."

The sociology association issued a statement as well: "The ASA expresses its deepest disappointment and profound concern about the Department of State's de facto denial of a visa, which has barred Professor Adam Habib from participating in the association's annual meeting. Such actions undermine the willingness of numerous scientists and academics from many nations to visit the United States and collaborate with their American colleagues. The ASA believes this limitation on scholarly exchange erodes our nation's reputation as a defender of the free and open search for knowledge." Reported in: *Chronicle of Higher Education* online, September 26; insidehighered.com, August 13.

Cleveland, Ohio

With some regularity in recent years, Bush administration officials have given speeches pledging their commitment to international education and to a smooth visa system for foreign scholars seeking to come to American universities.

There's just one problem. Cases continue to materialize in which scholars are kept out, leaving them and their American hosts frustrated and angry. There's the Canadian physicist who couldn't cross the border to attend a conference. A musicologist at Mills College has been unable to return there after she was turned away at the airport. It took two years (and a lawsuit) for the University of Nebraska at Lincoln to win a visa for one of its new faculty members. Add to those and a number of other cases the situation facing Marixa Lasso, an assistant professor of Latin American history at Case Western Reserve University in Cleveland.

Lasso's course for the fall—on Latin American history—has been called off. She's the only Latin Americanist in her department and she's stuck in Panama. Lasso is a Panamanian citizen, but she has had no trouble winning visas in the past or academic recognition in the United States. She won a Fulbright to study in the United States, earned her master's degree and Ph.D. at American universities and just saw her first book, *Myths of Harmony: Race and Republicanism During the Age of Revolution, Colombia, 1795–1831,* published by the University of Pittsburgh Press.

"Professor Lasso is a rising star in her field and we are lucky to have her on our faculty," said Jonathan Sadowsky, the history chair at Case Western. "This is a former Fulbright scholar who was here on a program designed to foster U.S. interaction with other cultures, who brings a real perspective to our department, who is being kept out. This is terrible."

The American Historical Association is among the groups that have recently weighed in on Lasso's behalf, with Barbara Weinstein, the president of the group, writing to the State Department, vouching for Lasso's work as an "outstanding scholar" and noting that all who know Lasso find it "astonishing" that her visa would now be held up. The Latin American Studies Association also is lobbying on her behalf.

Lasso said she too was astonished by what has happened. She travels to Panama regularly, to visit family members or to do research, and she went there after classes ended in the spring, planning to do research for the summer. In July, she went to the U.S. embassy for her visa renewal, which has always been routine in the past, and she was turned away—not only was she unable to get her visa, but she couldn't get any explanation of why she was being placed in limbo. "They told me that some things changed, but they won't tell me what," she said.

Cyrus C. Taylor, dean of the College of Arts and Sciences at Case Western, said officials there also have been unable to get any answer as to why Lasso would be suddenly unable to obtain a visa. The university is "gravely concerned" about the situation, but having difficulty figuring out its strategy when it doesn't know why Lasso was suddenly treated in a different way.

Leslie Phillips, a spokeswoman for the State Department, said that it is policy not to discuss individual visa cases. She said that the U.S. government's position is that "everybody who is qualified for a visa should get the visa and if they are denied a visa, it is for a specific reason required by law." Asked how people could point out possible errors if they don't know why they were rejected, she repeated: "If a visa is denied, [consular officials] are following the rules as prescribed by law."

Lasso said she is left to wonder why she was placed on the barred list. Some Latin American scholars have

(continued on page 265)

libraries

Pascagoula, Mississippi

A best-selling book by comedian Jim Norton will now be available again to library patrons here. The Library Board for the Jackson-George Regional Library System voted 3 to 1 September 25 to make *Happy Endings: The Tales of a Meaty-Breasted Zilch* available upon request, but not placed into general circulation. The book has been out of circulation since an Ocean Springs patron complained in August.

The Library System formed a review committee, which recommended the book again be made available to the public. Library Board Chair David Ables said the system uses the New York Times Best Seller List as a guide for purchasing books. But once or twice a year a book is challenged and is reviewed. It is pulled from the shelves while under review. Then it goes to the Library Board to decide what to do with it.

Board member David Ogborn said was the only board member to vote against reinstating the book. "I'm a director of a library, not an adult book club. That garbage doesn't belong in a library," Ogborn said.

Pascagoula resident Thomas Black said that sounds like censorship. "For the library in this day and time to pull any book from the shelves is just stupid, it's ridiculous," Black said.

The book will now get a second chance in the county libraries, but is causing a change in the system's practices. Most of the library branches automatically order all of the books on the *New York Times* bestsellers list. At the time, Norton's book was on that list. Now the directors have changed that process, so it's up to the individual library to pick which books to order.

"We will now no longer buy things until we have a closer look at them," Library System Director Michael Hamlett said.

Black is glad that the library is trusting readers with the freedom to choose. He says, "All books should be available to all people, no matter what your personal beliefs. That book should be available to everybody." Now Black and anyone else can feel free to check it out. There were only six copies of the book in the library system. Reported in: *South Mississippi Sun-Herald,* September 26; wlox.com, September 26.

publishing

New Haven, Connecticut

Yale University Press announced August 15 that a libel suit against it and one of its authors had been dropped, without any changes being made in the book or any payments to the plaintiffs. The book in question is about Hamas and the resolution came just weeks after Cambridge University Press settled a libel case over a book about Islamic terrorism by promising to destroy remaining copies of the book.

The cases are notably different in that Cambridge was sued in Britain (where libel protections for authors and publishers are much weaker than those in the United States) and Yale was able to file motions in California courts, which have stronger libel protections for authors and publishers than much of the United States. But the fact that Yale took a strong legal stance on a book about Hamas is likely to cheer scholars of terrorism, some of whom have been deeply concerned that the Cambridge settlement would prompt other presses to back down if sued.

The book over which Yale was sued is *Hamas: Politics, Charity, and Terrorism in the Service of Jihad,* by Matthew Levitt, who is director of the Stein Program on Terrorism, Intelligence and Policy at the Washington Institute for Near East Policy. While some observers have distinguished between Hamas's terrorist activities and the group's social service activities with Palestinians, Levitt's argument is that they are in fact intertwined. Yale's description of the book says: "Levitt demolishes the notion that Hamas' military, political, and social wings are distinct from one another and catalogues the alarming extent to which the organization's political and social welfare leaders support terror. He exposes Hamas as a unitary organization committed to a militant Islamist ideology, urges the international community to take heed, and offers well-considered ideas for countering the significant threat Hamas poses."

The libel suit was filed in California in April by KinderUSA, a nonprofit group that says it raises money for Palestinian children and families, and Laila Al-Marayati,

the chair of the group's board. They sued over two passages and related footnotes in the book about charitable groups in the United States that the author believes are linked to terrorist groups. The U.S. government has investigated some Muslim charities in the United States for such links, but also said that such probes do not suggest that all Muslim charities have such links.

The lawsuit specifically objected to this passage: "The formation of KinderUSA highlights an increasingly common trend: banned charities continuing to operate by incorporating under new names in response to designation as terrorist entities or in an effort to evade attention. This trend is also seen with groups raising money for al-Qaeda."

According to the suit, suggesting that KinderUSA "funds terrorist or illegal organizations" was "false and damaging" and libelous. The suit also alleged that Yale "did not conduct any fact-checking" for the book. KinderUSA asked the court for an injunction on its request that distribution of the book be halted, and also sought $500,000 in damages.

Since the suit was filed, Yale has indicated that it and its author stood behind the book. But in July, Yale raised the stakes by filing what is known as an "anti-SLAPP suit" motion, seeking to quash the libel suit and to receive legal fees. SLAPP is an acronym for "strategic lawsuit against public participation," a category of lawsuit viewed as an attempt not to win in court, but to harass a nonprofit group or publication that is raising issues of public concern. The fear of those sued is that groups with more money can tie them up in court in ways that would discourage them from exercising their rights to free speech. Anti-SLAPP statutes, such as the one in California with which Yale responded, are a tool created in some states to counter such suits.

In Yale's response, it noted that KinderUSA has been reported to be the subject of investigation by federal authorities, that these investigations have received detailed press coverage (prior to the book), and that the views of the book were legitimate and contained no errors of fact that meet the test for libel. Yale noted that the book was subject to peer review and copy editing and that the author verified that he had fact-checked the book. A Yale editor certified that he had no knowledge that anything in the book was incorrect. Yale's brief called the suit a "classic, meritless challenge to free expression," and sought the suit's dismissal and legal fees. While Yale's motion was not heard in court, the suit was withdrawn shortly after it was filed.

"I think this represents a win for free expression, and for university presses," said Dean Ringel, a lawyer who worked on the case for the Yale press. Ringel said Yale believed the book had not libeled anyone and that the suit needed to be defended.

Todd Gallinger, a lawyer for KinderUSA, confirmed that the suit had been withdrawn. He said his clients decided to do so not because of "anything we perceive in weaknesses in the actual case," but out of a desire to focus the group's "limited resources" on its mission of helping "Palestinian children in need." Asked if Yale's anti-SLAPP motion influenced the decision, Gallinger said that "Yale came at us hard."

The Cambridge book, *Alms for Jihad,* also dealt in part with the issue of the financing of terrorist groups by individuals or organizations that deny support for terrorism. The settlement in that case has been criticized by some authors as discouraging tough arguments about terrorism.

Sanford G. Thatcher, director of the Penn State University Press and president of the American Association of University Presses, said he thought his fellow press directors would be very pleased by the news that Yale had fended off a libel suit. He said that libel has been an increasing concern to presses in recent years, as the expense of litigation is not something that most university presses would want to face. The concern has been particularly notable for presses that publish extensively on the Middle East, he said.

"I think all presses are just more aware now of the possibility of a suit," he said. Reported in: insidehighered.com, August 16.

telecommunications

New York, New York

Reversing course, Verizon Wireless announced September 27 that it would allow an abortion rights group to send text messages to its supporters on Verizon's mobile network.

"The decision to not allow text messaging on an important, though sensitive, public policy issue was incorrect," Jeffrey Nelson, a spokesman for Verizon, said in a statement, adding that the earlier decision was an "isolated incident."

A week earlier, Verizon rejected a request from the abortion rights group Naral Pro-Choice America for a five-digit "short code." Such codes allow people interested in hearing from businesses, politicians and advocacy groups to sign up to receive text messages.

Verizon is one of the two largest mobile carriers. The other leading carriers had all accepted Naral's request for the code.

In turning down the request, Verizon told Naral that it "does not accept issue-oriented (abortion, war, etc.) programs—only basic, general politician-related programs (Mitt Romney, Hillary Clinton, etc.)."

Nelson called that "an incorrect interpretation of a dusty internal policy" that "was designed to ward against communications such as anonymous hate messaging and adult materials sent to children." The policy, Nelson said, had been developed "before text messaging protections such as spam filters adequately protected customers from unwanted messages."

But the program requested by Naral would have sent messages only to people who had asked to receive them.

Nancy Keenan, Naral's president, expressed satisfaction. "The fight to defeat corporate censorship was won,"

she said. But Keenan added that her group "would like to see Verizon make its new policy public."

Text messaging is an increasingly popular tool in American politics and an established one abroad. In his statement, Nelson acknowledged that the technology is "being harnessed by organizations and individuals communicating their diverse opinions about issues and topics." He said Verizon has "great respect for this free flow of ideas."

But the company did not retreat from its position that it is entitled to decide what messages to transmit. Legal experts said Verizon's position is probably correct under current law, although some called for regulations that would require wireless carriers of text messages to act like common carriers, making their services available to all speakers on all topics.

"This incident, more than ever, shows the need for an open, nondiscriminatory, neutral Internet and telecommunications system that Americans once enjoyed and took for granted," said Gigi B. Sohn, the president of Public Knowledge, a consumer advocacy group.

Some of Verizon's customers said they were outraged by the company's initial stance. Gary Mitchell, a lawyer in New Jersey, said he called a Verizon customer sales representative on this morning to cancel his wireless service in protest. After spending a few minutes on hold, he said, the representative read him an e-mail message that she said all the customer service representatives had just received. The message instructed representatives to tell callers that the policy had been reversed. Verizon kept Mitchell's business but lost some of his respect. "It was an incredibly foolish corporate decision," he said.

Wyn Hoag, a photographer in California, said he was still considering whether to cancel his Verizon service. "I'm a supporter of abortion rights, but I could be a Christian right person and still be in favor of free speech," Hoag said. "If they think they can censor what's on my phone, they've got another thing coming." Reported in: *New York Times,* September 27. □

(Is It Legal? . . . from page 262)

expressed fear that they are suspect if they write about current political movements that may be critical of the United States. But Lasso specializes in the 19th century. "I'm writing about things that are 200 years old, about people who are very much dead," said Lasso. "We have no idea why they are doing this and we don't know where to go."

Case Western let Lasso move a research leave to this semester, so she is being paid and doing research. But she doesn't know what will happen in the future. Her husband works as a software engineer in Cleveland so she has been kept away from him as well.

"I'm just so disappointed," Lasso said. While she's been waiting, she said, she has kept hoping that someone would tell her "what's going on and what they need" so she can show she is a scholar who poses no threat. "But they won't tell me what's going on, so I can't do anything. That's what's so frustrating. I feel so weak and powerless." Reported in: insidehighered.com, September 25.

colleges and universities

New York, New York

Scholars of anthropology and of Middle East studies are rallying around Nadia Abu El-Haj, an assistant professor of anthropology at Barnard College whose tenure bid has become the subject of an online skirmish in the larger conflict over research on the Middle East.

Central to the controversy Ms. Abu El-Haj's book, *Facts on the Ground: Archaeological Practice and Territorial Self-Fashioning in Israeli Society* (University of Chicago Press, 2001), which argues that Israeli archaeology has been shaped by Israeli national identity, and vice versa.

In August, a group of Barnard College alumnae posted an online petition urging that Abu El-Haj be refused tenure and outlining several criticisms of her book. That petition, which has drawn more than 1,000 signatures, accused her of being unfamiliar with Israeli archaeological research, of relying on anonymous sources, and of not being able to speak Hebrew. It also characterizes Abu El-Haj's book as a partisan indictment of Israeli archaeology that denies outright the existence of an ancient Israelite civilization.

Supporters of Abu El-Haj posted a counterpetition. Many of them cited the high esteem Abu El-Haj's research has been accorded in the fields of anthropology and Middle East studies, and many others directly countered the accusations leveled against the assistant professor—including the allegation that she does not speak Hebrew.

"Anybody who reads her work can see that it is replete with Hebrew sources, both written and oral," Lisa Wedeen, chair of the political science department at the University of Chicago and a scholar of the Middle East, said. She said that the book contains Abu El-Haj's own translations from Hebrew, and that they are "fluid and idiomatic."

Accusations that Abu El-Haj cannot speak Hebrew stem from an earlier scrutiny of her work by a group called the Va'ad ha-Emet, or Truth Committee, which said that she repeatedly confused the Hebrew words for "settlement" and "stream."

Paula R. Stern, a Barnard alumna and one of the authors of the petition against Abu El-Haj, reprinted last month on her blog, PaulaSays, an essay critical of Abu El-Haj's work. That essay, by Ralph Harrington, an independent scholar in Britain, argued that the Barnard assistant professor had a "conscious strategy of ideologically motivated misrepresentation" and that her "target is not Israeli archaeology at

all, but the existence of Israel itself." Harrington published a disclaimer on his blog, Graycat, saying he takes no position on the tenure dispute.

However, Wedeen said that the thesis of Abu El-Haj's book is inspired more by the philosophy of science than by any strain of political argument. "Her book is basically highlighting how science and nationalist imaginings work together, how they basically shape each other," she said.

Jean Comaroff, a professor of anthropology at the University of Chicago, writing about Abu El-Haj before the petition against her was posted, said that Abu El-Haj's work displays a "refusal ever to reduce knowledge to mere politics."

On page 8 of the book, Abu El-Haj says that the Israeli archaeological research she studied was "not driven by ideological positions writ large, but rather, as is typical of scientific work, good or bad, ... by paradigmatic conceptions of history and methods of practice, and by specific epistemological commitments and evidentiary criteria."

So at least some of the controversy over Abu El-Haj hinges on questions that awkwardly blend the philosophy of science with high-stakes politics. Namely: Is describing an archaeological find—or a claim to nationhood—as socially constructed different from denying its existence? From calling it a lie?

Others among the 400 or signatories to the petition in support of Abu El-Haj said it is standard practice to protect the identity of ethnographic subjects—hence the anonymous sources in her work. Many more said that the mechanisms of peer review, and not online popular campaigns, are the proper gauges of a scholar's work. Moreover, Abu El-Haj has fared well in that regard, they said, with several prominent grants, awards, and appointments to her name. Reported in: *Chronicle of Higher Education* online, August 20.

New York, New York

Columbia University has heard more than an earful over its much publicized decision to offer a speaking platform to Iran's president, Mahmoud Ahmadinejad. Reaction ranged widely, with many condemning the university for inviting the controversial leader, others praising Columbia's president, Lee C. Bollinger, for sternly rebuking the Iranian president while he looked on, and some doing both.

On September 26, one vehement critic, with a prominent platform of his own, went a large step further. U.S. Rep. Duncan Hunter, a Californian who is also a longshot candidate for the Republican nomination for president, introduced legislation that would "prohibit federal grants to or contracts with Columbia University." University officials called the legislation "unprecedented."

In a news release on the legislation, which he dubbed the "Restoring Patriotism to America's Campuses Act," the Congressman contrasted Columbia's willingness to play host to Ahmadinejad to its anti-military stance, as Hunter characterized it, regarding the Reserve Officer Training Corps and military recruiters.

"By hosting President Ahmadinejad, Columbia University openly insulted the thousands of servicemen and women serving in Iraq, many of whom are direct targets of the munitions that he is sending across the border," Hunter said. "This insult is compounded by the fact that Columbia University dissolved its Reserve Officer Training Corps (ROTC) program and continues to openly protest the presence of military recruiters on campus. It is troubling to see that a university such as Columbia, with a reputation as one of America's leading universities, is more receptive to America's adversaries than it is to the military that protects its right to free speech and assembly."

Hunter, who described himself in the news release as a "strong proponent of free speech," characterized the legislation as an "appropriate and reasonable response to an institution that welcomes a sponsor of terrorism while saying no to our nation's collegiate military training and recruitment program." He added: "If Columbia University wants to continue hosting our adversaries while turning its back on our military, then U.S. taxpayers should not be required to support the university's programs."

Before Ahmadinejad's speech, Hunter had called Columbia's invitation to the Iranian leader a "slap in the face of the 165,000 U.S. troops serving in Iraq," adding: "If the left-wingers of academia will not support our troops, they, in the very least, should not support our adversaries."

Information on Columbia's Web site shows that the university had $458 million in federal research expenditures in 2005, the latest year for which data were available, including $319 million from the Department of Health and Human Services, most of which presumably came from the National Institutes of Health. Throw in federal financial aid (if that were included) and other support, and that's serious money.

Terry W. Hartle, senior vice president for government and public affairs at the American Council on Education, said the legislation seemed "more about Republican presidential politics than a serious piece of legislation." But Hartle said he was still deeply troubled by the legislation, which he described as unprecedented. "I am unaware of a similar proposal to deny any federal funds to an institution of higher education," even in eras, such as during the Vietnam, when some lawmakers were plenty unhappy with what was unfolding on campuses.

Hunter's proposal "reflects the increasing willingness of some in the federal government to involve it in the affairs of American campuses," Hartle said. Given that the State Department had granted Ahmadinejad a visa to enter the country and President Bush had "said he respected Columbia's right to issue the invitation," Hartle said, "it's hard to understand why this would be a matter for such a draconian Congressional proposal." Reported in: insidehighered.com, September 28.

political expression

Kent, Ohio

A soft-spoken teacher posted the words "Impeach Bush" in a public garden, and Kent police cast him as an outlaw. Kevin Egler is fighting that in Kent Municipal Court, and the case is emerging as a free-speech issue of interest well beyond the boundaries of placid Portage County.

Police ticketed Egler for unlawfully advertising in a public place because he put up a free-standing sign near the intersection of Haymarket Parkway and Willow and Main streets. Egler said the officer who cited him July 25 asked: "Why don't you put the signs in your own yard?" Egler said his response was that he's a taxpayer and views the public space very much as his yard.

Egler and about a dozen friends and associates have placed hundreds of anti-war messages around Ohio and neighboring states over the past ten months. He said the effort is fueled by the notion that President Bush's military response after the 9/11 terrorist attacks was both illegal and immoral. The ticket in Kent represents the first serious legal challenge to the campaign, Egler said. (He said he was ticketed for littering in Columbus after a sign he placed on a bridge blew over.)

Egler said that when he was stopped in Kent, he asked the police officer how his sign differed from Realtors posting signs on public property saying "This way to the house for sale." He said the officer asked, "You don't know the difference?" but never explained what it might be.

Columbus attorney Bob Fitrakis, Egler's lawyer, said there is a difference: The real estate sign is commercial speech, and Egler's sign is political. Commercial messages do not have anywhere near the legal protections that political speech does, he said.

Fitrakis said this is the first Ohio case of its kind that he has heard of, because most prosecutions for political signs occur when someone defaces a building with paint or graffiti, but not a free-standing, easily removable sign. But Ohio politicians—including judges running for re-election—get a great deal of latitude when it comes to posting their campaign signs, and Fitrakis said he is not aware of any instance in which a mainstream politician has been hunted down and prosecuted for the act.

Kent Safety Director William Lillich said similar tickets have been issued there, but he is not sure whether they involved commercial or political messages. He said candidates have been contacted and told to move inappropriately placed campaign signs. Reported in: *Cleveland Plain Dealer,* August 9.

Charleston, West Virginia

A couple arrested at a rally after refusing to cover T-shirts that bore anti-President Bush slogans settled their lawsuit against the federal government for $80,000, the American Civil Liberties Union announced August 15.

Nicole and Jeffery Rank of Corpus Christi, Texas, were handcuffed and removed from the July 4, 2004, rally at the state Capitol, where Bush gave a speech. A judge dismissed trespassing charges against them, and an order closing the case was filed in U.S. District Court in Charleston.

"This settlement is a real victory not only for our clients but for the First Amendment," said Andrew Schneider, executive director of the ACLU of West Virginia. "As a result of the Ranks' courageous stand, public officials will think twice before they eject peaceful protesters from public events for exercising their right to dissent."

White House spokesman Blair Jones said the settlement was not an admission of wrongdoing. "The parties understand that this settlement is a compromise of disputed claims to avoid the expenses and risks of litigation and is not an admission of fault, liability, or wrongful conduct," Jones said.

The front of the Ranks' homemade T-shirts bore the international symbol for "no" superimposed over the word "Bush." The back of Nicole Rank's T-shirt said "Love America, Hate Bush." On the back of Jeffery Rank's T-shirt was the message "Regime Change Starts at Home."

The ACLU said in a statement that a presidential advance manual makes it clear that the government tries to exclude dissenters from the president's appearances. "As a last resort," the manual says, "security should remove the demonstrators from the event." Reported in: boston.com, August 16. ☐

(From the Bench . . . from page 254)

images on his computer screen, and then closing the sites were affirmative steps and corroborated his interest and intent to exercise influence over, and, thereby, control over the child pornography," Stevens said.

He added that while Diodoro was viewing the pornography, he had the ability to download, print, copy or e-mail the images. Judges Michael T. Joyce, Maureen Lally-Green, Debra M. Todd, Susan Peikes Gantman, Seamus P. McCaffery and Jack A. Panella joined Stevens in the majority.

Judge Richard B. Klein, the author of the majority opinion in the unanimous three-judge panel, authored a dissent from the en banc panel. He was joined by Judge John T. Bender.

Klein said the fact that the images were automatically saved to an Internet cache file on Diodoro's computer is not enough to show that he did anything but view them, considering there was no evidence that he knew they were automatically saved to the file. Klein said it isn't enough to just ask whether viewing the images is to knowingly possess or control them. He said the court must look at whether there is ambiguity in the definition of "possesses or controls."

Klein said the Legislature didn't include the word "viewing" in the statute, and the judges shouldn't write it in.

"If the Legislature fails to keep up with modern technology, it is not our responsibility to correct its oversight," he said.

Klein went into a discussion of the definition of control and argued that the majority did not use the correct definition. He said Diodoro was not given fair notice that he was committing a crime by merely viewing the images.

"If a person intentionally enters the Philadelphia Art Museum to view Cezanne's bathers, one would not say that that person 'possesses or controls' the painting," Klein wrote. "Why should it be different if a person visits the museum's Web site . . . and clicks on the part of the site that shows images of the same Cezanne bathers?"

Diodoro was arrested in Delaware County in November 2003 after police searched his residence and seized his personal computer. About 370 pornographic images were found, thirty of which were known to be child pornography, Stevens said. He had admitted viewing several hundred pornographic photographs—some of which depicted child pornography—after intentionally visiting specific Web sites for that purpose, according to the majority opinion.

In May 2005, Diodoro was convicted by a jury in Delaware County Common Pleas Court of thirty counts of sexual abuse of children for possessing child pornography and one count of criminal use of a communication facility. He was sentenced to between nine and 23 months imprisonment and five years probation.

The decision was a big win for Delaware County District Attorney G. Michael Green, who heads up the state's Internet Crimes Against Children Task Force out of his office. He said the ruling has broader applications in an age when computer-based information is being used in cases involving drugs, homicide and domestic relations. Green said there really is no possession of data in the traditional sense in the virtual world, but people can control the data.

"The court has recognized that evidence of control is the important factor in reviewing these possession of pornography cases," Green said. Reported in: *The Legal Intelligencer,* August 24.

etc.

San Francisco, California

A Californian who set up a vote-swapping Web site for supporters of Ralph Nader and Al Gore in 2000, before the state shut it down with a threat of prosecution, said he may try again next year now that a federal appeals court has ruled that online vote-trading agreements are constitutionally protected.

It all depends, Jim Cody said, on a candidacy by Nader or some other third-party hopeful that might siphon away enough votes from the Democratic nominee to tip the scales to a Republican in one or more states. His short-lived VoteSwap2000.com was meant to counteract that impact by inviting backers of Gore and Nader to agree to exchange votes.

Under the scheme, a Nader supporter in a swing state like Florida would promise to vote for Gore so that Nader's candidacy for the Green Party would not wind up benefiting the Republican, George W. Bush. In exchange, a Gore backer in a solidly Democratic state like California would vote for Nader to help the Green Party achieve the 5 percent vote support it needed for federal funding. Neither goal was met, but the venture could be revived in the future because of the court ruling.

"If there's a presidential election that's pretty tight, and a third-party candidate who's able to attract enough votes to make a difference . . . I think a vote-swap Web site would be helpful," Cody said, specifying that he's interested in helping only a Democratic candidate.

The August 6 ruling by the U.S. Court of Appeals for the Ninth Circuit in San Francisco, the first appellate decision to address the issue, could also be used by a Republican who wanted to offset the effect of a third-party candidate, like Ross Perot in 1992, who drew votes from the Republican nominee.

Cody of North Hollywood created VoteSwap2000 twelve days before the November 2000 election. It put Nader and Gore supporters in touch with one another so that they could agree to exchange votes. More than 5,000 people were matched in the first four days before Secretary of State Bill Jones, a Republican, advised Cody and his colleagues that they were engaged in an illegal "corruption of the election process" and faced criminal prosecution unless they shut down.

Cody immediately disabled his Web site, as did operators of VoteExchange2000, based in Massachusetts, who had heard about Jones' letter. Cody said that a few similar efforts continued elsewhere, including a small-scale venture based in the Bay Area during the 2004 election.

A suit by the owners of the 2000 Web sites was slowed by a procedural ruling and a policy change by Jones' Democratic successor, Kevin Shelley—who dropped the threat of prosecution and sought clarification from the Legislature—but a federal judge eventually ruled in the state's favor last year. The appeals court, however, said the Web sites did not foster vote-buying or other corrupt activities but merely allowed participants to discuss and agree on voting strategies, communication that was constitutionally protected freed speech.

"At their core, they amounted to effort by politically engaged people to support their preferred candidates and to avoid election results that they feared would contravene the preferences of a majority of voters in closely contested states," said Judge Raymond Fisher in the 3-0 ruling. Fisher was appointed by former President Bill Clinton, while the other two panel members were appointees of President Bush.

The plaintiffs were represented by the American Civil Liberties Union and by Demos, which describes itself as a nonpartisan political research and advocacy organization.

Brenda Wright, a lawyer with Demos, said the ruling should foster the use of the Internet to help voters communicate and strategize.

Nicole Winger, spokeswoman for Democratic Secretary of State Debra Bowen, who wound up as the defendant in the lawsuit, said the office was still studying the ruling. Reported in: *San Francisco Chronicle,* August 8.

Trenton, New Jersey

New Jersey's Supreme Court, easing up on its propensity for imposing constitutional obligations on property owners, has ruled that private residential communities may regulate expressive activity within their borders.

The justices held July 26 that a homeowners' association's rules regulating placement of political signs, charging rent for use of a community room and setting an editorial policy for its community newspaper were reasonable restrictions on time, place and manner of speech.

"[We] conclude that in balancing plaintiffs' expressional rights against the Association's private property interest, the Association's policies do not violate the free speech and right of assembly clauses of the New Jersey Constitution," the justices held unanimously.

The ruling put a kink in a line of New Jersey court cases that have required universities, shopping malls and other property owners to allow free speech when they invite public access. Those cases—notably *State* v. *Schmid,* from 1982, overturning Princeton University's ban on leafleting on campus, and *New Jersey Coalition Against the War in the Middle East* v. *J.M.B. Realty Corp.,* from 1994, voiding a shopping mall's leafleting ban—rested on the sociological premise that such properties are "functional equivalents" of town squares and other public forums.

The state's appellate division applied that line of cases in ruling last year that the Twin Rivers Homeowners Association, which governs a 2,700-home complex in East Windsor, with 10,000 residents, is a "constitutional actor required to respect fundamental rights protected by the New Jersey Constitution when exercising dominion over persons residing within its borders."

While not disagreeing in principle, the court said the *Schmid/Coalition* principles apply differently to a private residential community, where invitation of the public is minimal and where homeowners knowingly waive or curtail constitutional rights as a matter of contract to achieve a certain type of residential environment.

"Twin Rivers is a private, residential community whose residents have contractually agreed to abide by the common rules and regulations of the Association," wrote Justice John Wallace, Jr. "We find that the minor restrictions on plaintiffs' expressional activities are not unreasonable or oppressive, and the Association is not acting as a municipality."

The justices did leave open the possibility that more onerous regulations might be actionable. "Our holding does not suggest . . . that residents of a homeowners' association may never successfully seek constitutional redress against a governing association that unreasonably infringes their free-speech rights," Wallace wrote.

He noted that residents have other protections against infringement of their free speech rights. They include the business-judgment rule, which allows invalidation of arbitrary decision making by a governing association.

In addition, Wallace said, restrictive covenants that unreasonably limit speech and association rights could be challenged under a section of the Planned Real Estate Development Full Disclosure Act that requires a homeowners' association to "exercise its powers and discharge its functions in a manner that protects and furthers the health, safety and general welfare of the residents of the community."

Finally, traditional principles of property law apply. "Our courts have recognized that restrictive covenants on real property that violate public policy are void as unenforceable," Wallace said. And since "highest source of public policy" is the state constitution, "restrictive covenants that unreasonably restrict speech—a right most substantial in our constitutional scheme—may be declared unenforceable," he concluded.

Homeowners' associations and free-speech advocates have been waiting for the ruling since about 1 million people in New Jersey, or about 40 percent of all households, live in some type of planned community with varying restrictions.

The lawyer representing the Twin Rivers association, Barry Goodman, of Woodbridge's Greenbaum Rowe Smith & Davis, said the court "agreed that homeowners' associations are not governed by the constitution, and that the rules Twin Rivers had at issue were absolutely reasonable."

The plaintiffs lawyer, Frank Askin, says the ruling is "oblique" in that it upholds the particular restrictions at Twin Rivers but says homeowners' associations may not totally clamp down on residents' speech. "I think they're just saying that these three rules are not unreasonable," says Askin, director of the Constitutional Law Center at Rutgers Law School-Newark. "I would call it a mixed result."

But Askin conceded the court is "pulling back" from the standards it set in Schmid and Coalition. "That opens the door for more litigation," he said. Reported in: *New Jersey Law Journal,* July 30. □

(Censorship Dateline . . . from page 246)

who, following the death of her husband, realizes the promise made by the island nation¹s protector deity Hachiman by claiming Korea as part of a greater Japan.

Though myth, the tale formed a launching point for a version of Japanese history taught in classrooms well into

the modern era. It has also played a central role in justifying two separate invasions of Korea, the first in the sixteenth century, and again in the twentieth, when Japan succeeded in colonizing the peninsula for over three decades. Japanese rule was justified as the fulfillment of ancient claims over Korea, as depicted in the scroll.

Not all Koreans, however, view the exhibit as historical. Taesoo Jeong, editor-in-chief of the *Korea Times* in San Francisco, emphasized the scroll's artistic value over its historical accuracy. Though he acknowledged the scroll's potential in conveying a "false" impression of Korean history, he nevertheless defended its inclusion in the exhibit.

"It is ridiculous to put a work of art on trial," Jeong wrote in a recent editorial. Artists in Korea routinely malign Japan, he says, adding that Koreans should be more reflective of their own attitudes before attacking this or any other piece of art.

The museum's chief curator and organizer of the Telling Tales exhibit, Forrest McGill, said this particular painting was selected for its narrative qualities as an example of how Japan, and Asia in general, used art to depict stories. "The exhibit was not meant to be historical," explained McGill, who said the emphasis was on the painting's elements of narrative animation, a theme intended to complement two other exhibits currently on display. Reported in: ncmonline.com, August 28.

foreign

Berlin, Germany

Dozens of academics have signed two open letters to Germany's federal prosecutor, protesting the arrest and detention of Andrej Holm, a sociologist at Berlin's Humboldt University who specializes in critical research on urban gentrification. Holm was arrested July 31, a few hours after three members of an alleged militant group were arrested on suspicion of attempted arson against four German army vehicles in the State of Brandenburg. Holm is purported to have met with one of the accused arsonists in "conspiratorial circumstances" earlier this year.

The arrest warrant states that he participated in at least one of those meetings without taking his mobile telephone, and cites that omission as evidence of "conspiratorial behavior." He is also said to have taken part in the "resistance mounted by the extreme left wing" at the Group of Eight economic summit held in June in Heiligendamm, Germany, which was attended by President Bush and other world leaders.

On the evening of Holm's arrest, the workplaces and homes of three other individuals in Berlin, including another academic who has thus far been identified only as Matthias B., were searched by the police. The warrants used in those proceedings revealed that the four Berliners had been under surveillance since September 2006. Charges are now pending against all four, but only Holm was taken into custody.

After his arrest, Holm was flown to Karlsruhe, the seat of Germany's federal court, for a pretrial hearing and has been held since then in solitary confinement in Berlin's Moabit prison, his supporters say. They say that he is allowed only one hour of activity each day and that his meetings with his lawyer are conducted through a glass partition. He has reportedly not been permitted to shower since his arrest.

Holm is accused of suspected membership in a terrorist organization under Section 129a of Germany's penal code, a provision dating from the 1970s, when attacks by groups like the Red Army faction sparked widespread terror fears across Germany. The measure has been controversial since its passage, Neil Brenner, a professor of sociology at New York University who is helping to mobilize support for Holm and Matthias B., said in an interview.

"What's happening now is that the German federal prosecutor's office is deploying this section in order to persecute particular groups for political reasons," Brenner said. The law grants such broad discretion to government authorities, he said, that it "gives prosecutors the right to arrest and detain people suspected of having given intellectual or ideological guidance to people who have committed a crime, if the prosecutors can demonstrate some sort of intellectual or ideological link between them."

Their defenders are especially disturbed by the way in which the academic work of Holm and Matthias B. seems to have been used as evidence against them.

"We strongly reject the outrageous accusation that the academic research activities and the political engagement of Andrej Holm are to be viewed as complicity in an alleged 'terrorist association,'" one of the open letters signed by academics says. "The federal prosecutor, through applying Article S. 129, is threatening the freedom of research and teaching as well as social-political engagement."

The other letter explicitly condemns the alleged militant groups' use of violence. "However," it adds, "we strongly object to the notion of intellectual complicity adopted by the federal prosecutor's office in its investigation."

Saskia Sassen, a Dutch sociologist who joined the faculty of Columbia University this fall, likened the prosecutor's use of 129a to "attacks on the liberal state" that she believes are taking place in the United States under the USA Patriot Act. "The federal prosecutor is saying that the language they use in their academic writing about gentrification can lead to serious crimes against public order," said Sassen. "This is the federal prosecutor of Germany, not some low-level policeman," she added incredulously.

The charges against Matthias B., a political scientist at the Free University of Berlin who has chosen not to reveal his full name, allege that he has used "phrases and key words" in his academic writings that are also used by the alleged militant group. The warrant says that, as an employee of a research institute, he has access to libraries where he can inconspicuously do the research needed to help the militant group draft its texts.

Citing Matthias B.'s access to a research library as part of the basis for the charges against him "illustrates the incredible arbitrariness of the federal prosecutor's indictment," Brenner said. The prosecutor "is indicting Matthias B. for behavior that any urban researcher is required to do by very nature of his job," he added. "In the context of its broader attempt to fight against left-wing violence, the German government is trying to criminalize critical urban research. Scholars using standard terms used in urban studies are being indicted, and these are being used as grounds to link them to an alleged terrorist organization."

Brenner attended the annual conference of the American Sociological Association in New York, where a motion in support of the accused academics was unanimously passed. Reported in: *Chronicle of Higher Education* online, August 20.

Tochigi Prefecture, Japan

A library in Tochigi Prefecture has withdrawn from circulation a book on a 17-year-old boy who was sent to a reformatory for killing three members of his family in an arson attack on his home. The library made the decision a day after prosecutors searched the homes of the author and the doctor who diagnosed the boy as mentally ill on suspicion that confidential information from the boy's closed juvenile trial had been leaked.

It also was revealed that municipal libraries in Kyoto and Yamagata prefectures also had pulled the book from their shelves—a move that some experts described as tantamount to censorship.

Freelance journalist Atsuko Kusanagi quoted the boy's deposition in the book, *Boku wa Papa o Korosu koto ni Kimeta* (I Decided to Kill My Dad), which tells the story of the incident last June in Tawaramotocho, Nara Prefecture, in which the boy killed his stepmother, brother and sister.

Officials from the Nara District Public Prosecutors Office searched the homes suspecting that the doctor provided the boy's deposition to the writer. "It has become a social issue and we decided it was better not to lend the book out until the current judicial investigation is concluded," library director Takeo Kameyama said.

The Kameoka Municipal Library in Kyoto Prefecture pulled the book from its shelves after the Tokyo Legal Affairs Bureau in July urged Kusanagi and the book's publishing company not to cause any more suffering.

The central municipal library in Kahokucho, Yamagata Prefecture, has kept the book, published in May by Kodansha, Ltd., off its shelves and stopped lending copies after hearing of the book's content in June—just after its publication.

Previous examples of publications being taken off library shelves have included issues of the weekly photo magazines *Focus* and *Shukan-Shincho* for printing pictures of the face of a Kobe youth who murdered two primary school students and attacked three others in 1997; the monthly literature magazine *Bungei-Shunju* for printing prosecutor's records on a boy in 1998; and the *Shukan-Bunshun* weekly for running an article about the private life of the eldest daughter of former Foreign Minister Makiko Tanaka in 2004.

"Unless there is some exceptional reason, libraries should be places where people can read what they like," Takaaki Hattori, a professor in media law in the sociology department of Rikkyo University, said. "Stopping the lending of books because public authorities have taken action is censorship, and libraries should preserve the freedom of expression guaranteed in Article 21 of the Constitution," he added. Reported in: *Yomiuri Shimbun,* September 17.

Amsterdam, Netherlands

Dutch Minister of Education Ronald Plasterk wants Adolf Hitler's *Mein Kampf* to remain on the blacklist, despite his earlier pronouncement that the book ought to be available for sale in the shops. This contradictory position is a sign of the ponderous way in which the Netherlands deals with freedom of speech.

Mein Kampf is the only book that has not been freely available in the Netherlands since the end of the Second World War. The book forms the basis of Hitler's Nazi ideology, and is regarded as inciting hatred of, amongst others, the Jews. According to Dutch MP Geert Wilders of the Freedom Party, the *Qu'ran* is also a hate-inciting book that also ought to be banned. According to Wilders, the Qu'ran could be seen as encouraging violence against disaffected Moslems, and also endorsing the use of violence by Islamic extremists.

Plasterk has resisted calls for a ban on the *Qu'ran,* and said in the magazine *Hollands Diep* that even *Mein Kampf* should no longer be banned. According to Plasterk, it's good to make the book freely available, as it can be used to grasp how the horrifying events of World War II came about. This is exactly the same as reading the Little Red Book of Chairman Mao to understand the Chinese Cultural Revolution.

Nevertheless, this conviction of Plasterk is not a sufficient reason to take *Mein Kampf* off the blacklist. "My judgement is not a policy statement," he says, and in that sense he goes back on his pronouncement that the books should no longer be banned. Meanwhile, there has been a lot of consternation in the Dutch parliament over Plasterk's original statement.

Leader of the Dutch Party for Freedom Gert Wilders spoke of a "crazy suggestion." He called it turning the world on its head. "I ask for the *Qu'ran* to be banned because the book is inciting hate, and as a result we get another hate book." Reported in: radionetherlands.nl, September 12. □

intellectual freedom bibliography

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