newsletter on intellectual freedom

IFC ALA

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ALA urges Congress to reform laws governing use of National Security Letters

The American Library Association's Council unanimously passed a resolution condemning the use of National Security Letters (NSLs) to obtain library records and urging Congress to pursue immediate reforms of NSL procedures (see text of resolution on page 176).

The resolution, adopted at the 2007 ALA Annual Conference in Washington, D.C., arose out of ALA's concerns over the misuse and abuse of NSLs detailed in the March 2007 report submitted to Congress by the Department of Justice's Office of Inspector General. The report described how the FBI engaged in widespread and serious abuses of its authority to use NSLs, including significantly understating the number of NSLs used by the FBI in the classified reports given to Congress; using NSLs to collect consumer information, a practice prohibited by statute; and circumventing the requirements of the NSL statute to obtain information in the absence of any duly authorized investigation.

The resolution also supported George Christian's appeal to Congress to reconsider the NSL authorities that allow the FBI to subject innocent people to fishing expeditions of their personal information with no judicial review. Christian, executive director of the Library Connection in Windsor, Connecticut, testified before Congress on behalf of himself and his colleagues, librarians Janet Nocek, Barbara Bailey, and Peter Chase, about their experience in being served with an NSL to obtain library users' records and being gagged from discussing it.

In his testimony, Christian asked the Senators "to take special note of the uses and abuses of NSLs in libraries and bookstores and other places where higher First Amendment standards should be considered." The four—known as the "Connecticut John

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Kenton L. Oliver, Chair

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IFC report to ALA Council

The following is the text of the Intellectual Freedom Committee's report to the ALA Council presented by IFC Chair Kenton Oliver on June 27 at the ALA Annual Conference in Washington, D.C.

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

Information

Fostering Media Diversity in Libraries

In June 2003, when the Federal Communications Commission (FCC) decided to relax a variety of media ownership regulations, many concerns were raised about media concentration, especially by those wanting to uphold the principles of diversity and localism.

At the 2003 Annual Conference, ALA Council adopted "New FCC Rules and Media Concentration" (www.ala.org/ala/oif/statementspols/ifresolutions/newfccrulesmedia.htm), opposing rules changes related to media ownership caps and cross-ownership rules that would encourage further media concentration.

Following that Annual Conference, the IFC established the FCC Rules and Media Ownership Subcommittee. Subsequently, its name was changed to Impact of Media Concentration on Libraries. It was charged to examine the impact of these mergers on intellectual freedom, access to information, and diversity of opinion in local communities, and to review how libraries could counter the effects of media consolidation by identifying innovative ways that libraries provide materials and information presenting all points of view.

To fulfill its charge, the subcommittee developed "Fostering Media Diversity in Libraries: Strategies and Actions." This guideline is designed to provide libraries, library consortia, and library networks with a centralized list of strategies and actions to help them fulfill one of their key responsibilities: to provide access to a diverse collection of resources and services. Special attention has been given to the acquisition of and access to small, independent, and alternative sources—including locally produced ones—in all formats, including print, audio/visual media, and electronic.

"Fostering Media Diversity in Libraries: Strategies and Actions" will be available on the OIF Web site as a PDF to download.

Having completed its charge, the Impact of Media Concentration on Libraries Subcommittee was dissolved.

ALA Standards for Accreditation of Master's Programs in Library and Information Studies

The Committee on Accreditation requested input on its draft revision of the "Standards for Accreditation of Master's Programs in Library and Information Studies." The IFC suggested edits to indicate:

- library and information studies should include a comprehension of the profession's core values and principles, including the Library Bill of Rights and the Code of Ethics;
- the library schools' program objectives should reflect the philosophy, principles, and ethics of the library field, including intellectual freedom, equity of access, and legal and ethical use of information and the role of the library in the development and endorsement of intellectual freedom;
- the curriculum should provide information literacy and foundational principles concerning intellectual freedom, equity of access, privacy, and the legal and ethical use of information, and emphasize the role of the library in the development and endorsement of intellectual freedom; and
- curriculum evaluation should include assessment of students' successful completion of all learning outcomes defined for the program.

The IFC looks forward to a greater inclusion of the subjects of intellectual freedom and ethics in library and information studies.

Gay, Lesbian, Bisexual, and Transgender Tool Kit

This new resource (www.ala.org/ala/oif/iftoolkits/glbttoolkit/glbttoolkit.htm) was created by the GLBT Round Table and the Intellectual Freedom Round Table (IFRT) and is mounted on the OIF Web site. It is designed to help librarians understand the importance of having inclusive collections and programs, and to provide challenge support.

Strategic Thinking

At its 2006 spring meeting, the Intellectual Freedom Committee (IFC) discussed how it could strategically place itself in ALA, how it could spend more of its time and energy helping to create direction for ALA, and how it could continue bringing in other ALA units' expertise on its projects as well as ensure collegial reciprocity. Lists of strategies were prepared. At the 2007 Conference, the committee discussed OIF staff's review of the strategies and the status of each.

Many of the strategies the committee suggested and discussed with OIF staff have been implemented. The discussion proved to be an invaluable learning experience for the committee, and a catalyst for OIF to think about other means to expand ALA's intellectual freedom program.

ALA Affiliate Representation on the IFC

IFC extended invitations to the American Indian Library Association, Asian/Pacific American Librarians

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Resolution on the Use and Abuse of National Security Letters

On the Need for Legislative Reforms to Assure the Right to Read Free of Government Surveillance

Adopted unanimously by the Council of the American Library AssociationWednesday, June 27, 2007, Washington, D.C.

WHEREAS, the American Library Association (ALA) is committed to preserving the privacy rights of all persons in the United States, especially library users and library employees; and

WHEREAS, the freedom of thought is the most basic of all freedoms and is inextricably linked to freedom of inquiry; and freedom of inquiry can be preserved only in a society in which privacy rights are rigorously protected; and

WHEREAS, ALA reiterates its opposition to any proposal or actions by government that suppresses the free and open exchange of knowledge and information or that intimidates individuals exercising free inquiry; and

WHEREAS, certain statutes authorized by Congress provide the Federal Bureau of Investigation (FBI) authority to use National Security Letters (NSLs), a form of administrative subpoena issued without judicial oversight or adequate judicial review; and

WHEREAS, NSLs can be used by the FBI to obtain an individual's most personal information, including financial records, credit records, telecommunication records, and Internet use records, including library Internet use records, without ever notifying the individual; and

WHEREAS, the laws authorizing the use of NSLs automatically impose a permanent nondisclosure or "gag" order on any recipient of an NSL, making it illegal for individuals or organizations to ever reveal that they have been asked to provide records or information to the FBI and requiring NSL recipients to risk fines and imprisonment in order to report any abuse of government authority, abrogating the recipients' First Amendment rights; and

WHEREAS, the Department of Justice's Office of Inspector General (OIG) reported it found that the FBI had engaged in widespread and serious abuses of its authority to use NSLs. These abuses include significantly understating the number of NSLs used by the FBI in the classified reports given to Congress; using NSLs to collect consumer information, a practice that is prohibited by statute; and using exigent letters (requests to provide information prior to the issuance of an actual NSL or subpoena) to circumvent the requirements of the NSL statute and to obtain information in the absence of any duly authorized investigation; and

WHEREAS, the FBI collects and shares vast amounts of information derived from NSLs with local, state, and federal law enforcement and intelligence agencies, foreign governments, and, pursuant to executive order, "appropriate private sector entities"; and

WHEREAS, the FBI attempted to use an NSL to obtain library users' records from the Library Connection in Windsor, Connecticut; and

WHEREAS, FBI Director Robert Mueller caused classified written testimony to be provided to the Senate Judiciary Committee on March 30, 2007, concerning other instances when FBI agents may have used NSLs to obtain information from libraries about library users; and

WHEREAS, the FBI's documented abuse of its NSL authorities indicates that information about library users may be misused and disclosed in a manner contrary to law and professional ethics; and

WHEREAS, the use of NSLs strips members of the public, including librarians, of their fundamental First Amendment rights; now, therefore, be it

RESOLVED, That the American Library Association condemns the use of National Security Letters to obtain library records; and, be it further

RESOLVED, That the American Library Association urges Congress to pursue legislative reforms in order to provide adequate protection for each library user's Constitutional right to be free from unwarranted and unjustified government surveillance, including

- Judicial oversight of National Security Letters (NSLs) requiring a showing of individualized suspicion and demonstrating a factual connection between the individual whose records are sought by the FBI and an actual investigation;
- Elimination of the automatic and permanent imposition of a nondisclosure or "gag" order whenever an NSL is served on an individual or institution;
- Allowing recipients of NSLs to receive meaningful judicial review of a challenge to their NSL without deferring to the government's claims;
- Increased oversight by Congress and the Office of the Inspector General of the U.S. Department of Justice over NSLs and FBI activities that implicate the First Amendment; and
- Providing for the management, handling, dissemination and destruction of personally identifiable information obtained through NSLs; and, be it further

RESOLVED, That the ALA communicates this resolution to the Offices of the President and Vice President, Congress, ALA members, and state chapters; and that ALA urges its members, state chapters, and all library advocates to ask Congress to restore civil liberties and correct the abuse and misuse of National Security Letters. ☐

Fostering Media Diversity in Libraries: Strategies and Actions

Prepared by the American Library Association, Intellectual Freedom Committee Subcommittee on the Impact of Media Concentration on Libraries

In June 2003, the American Library Association (ALA) passed a resolution deploring the Federal Communications Commission's (FCC) actions changing media ownership rules that encourage further concentration of the media. The resolution also called on the Intellectual Freedom Committee (IFC) to examine the impact of media mergers on intellectual freedom, access to information, and diversity of opinion in local communities. The IFC Subcommittee on the Impact of Media Concentration on Libraries elicited comments from the library community about the problem and then determined that libraries can best counter the effects of media consolidation by increasing awareness of its impact and identifying innovative ways to provide materials, information, and services that foster media diversity in libraries.

Purpose

The purpose of this document is to provide libraries, library consortia, and library networks with a centralized list of strategies and actions to help them fulfill one of their key responsibilities: to provide access to a diverse collection of resources and services.[1] Throughout the document, special attention is given to the acquisition of and access to small, independent, and alternative sources—including locally produced and international ones—in all formats: print, audio/visual media, and electronic. These sources in particular, including open access, collaboratively produced, and other free Internet sources, have the potential to counteract the influence and consequences resulting from increased concentration of media ownership that affects all types of libraries.

The actions proposed in this document offer numerous approaches to countering the negative effects of media concentration and to promoting the growing, yet often less powerful, body of small, independent, and alternative sources of information. Each library will need to decide which actions are most appropriate and realistic to meeting its goals within budgetary and space constraints. The actions are presented as a means to reach a goal common to all libraries: providing access to a diverse collection of resources and services.

Background

A primary mission of libraries is to provide a full spectrum of resources and services to the communities they serve. Through this mission, they celebrate and preserve the ideals of a democratic society by making available the widest possible range of viewpoints, outlets, programs, and sources in order to ensure that everyone has the opportunity to participate in today's information society. Citizens increasingly need civic spaces—physical and virtual—where they are welcome to speak freely, discern different perspectives, share similar interests and concerns, and pursue what they believe is in their and the public's interest. Libraries serve that civic role, making knowledge, ideas, and information available to all citizens and by serving as the public source for the pursuit of independent thought, critical attitudes, and in-depth information. As limited public forums, libraries have "a privileged and influential position regarding the provision of access to information by the citizenry."2 And they serve as pivotal community institutions upholding, strengthening, and realizing fundamental democratic ideals.

A central purpose of the First Amendment is to protect marginal views. In order to do this, libraries must embrace their role of creating, collecting, and preserving diverse information resources. Over the years, ALA has developed and endorsed numerous policies guided by the Library Bill of Rights, a statement rooted in the First Amendment, that affirms that all libraries are forums for information and ideas and that they should "provide materials and information presenting all points of view on current and historical issues." Furthermore, they should not exclude items "because of the origin, background, or views of those contributing to their creation."

With growing concentration of media ownership, independent voices decrease and locally produced and locally relevant information, news, and cultural resources diminish. Libraries cannot ensure "the widest possible dissemination of information from diverse and antagonistic sources," unless they counter the detrimental impact of media consolidation on the diversity of ideas and localism in their communities.[3] When media consolidation restricts the creation and dissemination of multiple perspectives, the public no longer has a healthy, open exchange of information and ideas. In an era when democratic discourse is more essential than ever, the information system is out of balance. Libraries must provide forums—both physical and virtual—that create opportunities for individuals to engage in the open and balanced exchange of viewpoints and ideas.

New technologies and market innovations now enable the distribution of more specialized content, creating what Chris Anderson calls the "long tail."[4] Instead of a mass production push system, an emerging pull economy allows niche products to coexist with best sellers, providing important openings for institutions such as libraries to fulfill their unique responsibility and obligation to provide a forum for unheard voices.

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FTRF report to ALA Council

The following is the text of the Freedom to Read Foundation's report to the ALA Council presented on June 26 at the ALA Annual Conference in Washington, D.C., by FTRF President John Berry.

As President of the Freedom to Read Foundation, I am pleased to report on the Foundation's activities since the 2007 Midwinter Meeting:

Youth and the First Amendment

This spring, the Freedom to Read Foundation's (FTRF) trustees were glad to have two different opportunities to advocate directly on behalf of the right of young persons to exercise their First Amendment freedoms.

The first of these opportunities came in February, when FTRF joined with the Student Press Law Center, Feminists for Free Expression, the First Amendment Project, and the Thomas Jefferson Center for the Protection of Free Expression to file an *amicus* brief in the case of *Morse v. Frederick*. This case, better known as the "Bong Hits 4 Jesus" lawsuit, was filed by Joseph Frederick and his parents after Frederick was suspended from his high school for displaying a banner during the Olympic Torch relay that read "Bong Hits 4 Jesus." Frederick was not on school property and was not participating in a school activity at the time he raised the sign (although the school district argued it was a school-sanctioned event by virtue of the fact that the students were let out of school and accompanied by teachers).

While the circumstances of this case may amuse us, the stakes were very high. We are seeing more and more school administrators claim the right to regulate student speech—not only speech that takes place on campus, but speech that is unconnected with the student's attendance at or participation in school activities. This lawsuit was the first major case to consider student free speech rights in many years, and we were hopeful the Supreme Court would vindicate the right of young people to voice their ideas in the wider world without fear of official retribution.

The Supreme Court heard oral arguments on March 19, and handed down a decision June 25. The majority of the Court decided against Frederick, overturning the decision of the Ninth Circuit Court of Appeals. In writing the majority opinion, Chief Justice John Roberts considered the content of the banner, claiming that it "promoted illegal drug use" and that "failing to act would send a powerful message to the students in [principal Deborah Morse's] charge." In a dissent, Justice John Paul Stevens said the majority was "inventing out of whole cloth a special First Amendment rule permitting the censorship of any student speech that mentions drugs."

Our second opportunity to defend students' right to read freely came in *ACLU of Florida v. Miami Dade School Board,* when FTRF filed an *amicus curiae* brief urging the Eleventh Circuit Court of Appeals to uphold a district court's order requiring the school board to return the book *Vamos a Cuba* to school library shelves. The school board voted to remove *Vamos a Cuba* and its English-language edition, *A Visit to Cuba,* from all Miami-Dade school libraries last summer after a group of parents objected to the book's portrayal of Cuban society as offensive to the Miami-Dade Cuban community.

Subsequently, the district court ruled that the removal was unconstitutionally motivated and entered a preliminary injunction ordering the school district to immediately reinstate the entire Visit to . . . series on library shelves. After the Miami-Dade School Board appealed the decision to the Eleventh Circuit Court of Appeals, FTRF joined with the American Booksellers Foundation for Free Expression (ABFFE), the Association of Booksellers for Children, REFORMA, Peacefire, and the National Coalition Against Censorship to file its amicus brief supporting young peoples' First Amendment right to access and read such books as *Vamos a Cuba* in the school library.

On June 6, the Eleventh Circuit heard oral arguments, and we await the court's opinion.

The Freedom to Read Freely

Of course, FTRF has continued to defend the right to read and speak freely. I am very pleased to report to you that once again, a federal district court has struck down the Child Online Protection Act (COPA), a law that regulated and criminalized many kinds of Internet speech otherwise protected by the First Amendment.

Following a four-week trial on the issues in *Gonzales v. American Civil Liberties Union,* Judge Lowell Reed of the U.S. District Court in Philadelphia permanently enjoined enforcement of COPA on March 22, ruling the law facially violates both the First and Fifth Amendments of the Bill of Rights. In so doing, Judge Lowell concluded the regulations imposed by COPA on constitutionally protected materials deemed "harmful to minors" were overly restrictive, given that parents can use Internet filtering software to block content in their homes. In overturning COPA, Judge Reed took pains to reiterate his view that "perhaps we do the minors of this country harm if First Amendment protections, which they will with age inherit fully, are chipped away in the name of their protection."

We hope Judge Reed's opinion will stand as the final word in this litigation, which has been ongoing since 1998 and has been before the Supreme Court twice. FTRF has participated as an amicus in all phases of the litigation and is committed to continuing its participation if the government appeals Judge Reed's decision.

It is important to note that the court's endorsement of Internet filters as a useful tool for parents to use in the home

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Senate committee asks EPA to reopen its libraries

After nearly a year of controversy over Environmental Protection Agency (EPA) library closings and consolidations, the Senate Appropriations Committee June 26 recommended that the agency restore the network of libraries to its former capacity. The committee report on the FY2008 Interior Appropriations Bill (S. 1696) directs the EPA to submit by December 31 a plan on how to use $2 million—the same amount cut from the agency's FY2007 budget—to accomplish the restoration and "maintain a robust collection of environmental data and resources in each region."

The closures, which the agency promoted as a consolidation of its regional libraries in favor of an increased online presence, drew fire from the American Library Association and the Special Libraries Association, EPA employee unions, and Senators Barbara Boxer (D-CA) and Frank R. Lautenberg (D-NJ), who in a November 3 letter called on the EPA to stop the process.

"While the Committee approves of efforts to make environmental data collections available electronically, the Committee does not agree to further library closures or consolidations without evidence of how the public would be served by these changes," the report reads. "Therefore, the Committee expects the EPA to restore publicly available library facilities in each region."

"We thank the Senate Appropriators for recognizing the public need for the information made available through the EPA libraries, giving EPA the money to reopen the closed libraries, and insisting EPA develop a plan to keep important environmental information accessible to the public," Emily Sheketoff, executive director of the ALA Washington Office, told *American Libraries.*

If adopted by the Senate, the bill would have to be aligned with the House version of the Interior Appropriations Bill, which has passed but does not address the EPA library closings. Reported in: American Libraries Online, July 6. ☐

judge criticizes wiretap program

A federal judge who used to authorize wiretaps in terrorist and espionage cases has criticized President Bush's decision to order warrantless surveillance after the September 11 attacks. The judge, Royce C. Lamberth of U.S. District Court in Washington, said it was proper for executive branch agencies to conduct such surveillances. "But what we have found in the history of our country is that you can't trust the executive," he said at the Annual Conference of the American Library Association.

Judge Lamberth, who was appointed by President Ronald Reagan, disagreed with letting the executive branch alone decide which people to spy on in security cases. "The executive has to fight and win the war at all costs," he said. "But judges understand the war has to be fought, but it can't be at all costs." He added: "We still have to preserve our civil liberties. Judges are the kinds of people you want to entrust that kind of judgment to more than the executive."

Judge Lamberth was named chief of the Foreign Intelligence Surveillance Court in 1995 by Chief Justice William H. Rehnquist. He held that post until 2002. The court meets in secret to review applications from the FBI, the National Security Agency, and other agencies for warrants to wiretap or search the homes of people in the United States in terrorist or espionage cases. Reported in: *New York Times,* June 23. ☐

new ALSC electronic publication helps children understand intellectual freedom issues

The Association for Library Service to Children (ALSC), a division of the American Library Association (ALA), has just released "Kids, Know Your Rights! A Young Person's Guide to Intellectual Freedom." The four-page, full-color brochure is free to download in PDF format at www.ala.org/ala/alsc/alscpubs/KidsKnowYourRights.pdf.

Written by members of ALSC's Intellectual Freedom Committee, the brochure speaks directly to children in grades five and up, using simplified, kid-friendly language to tackle difficult, abstract ideas. After an introduction that explains intellectual freedom, the brochure forges ahead to discuss challenges to the First Amendment; censorship, how it affects children, and how they can defend their right to read; privacy and confidentiality; and respecting the opinions of others. A bibliography of suggested nonfiction and fiction titles for children on these subjects also is included.

"There has been a lack of accessible information available to young people about intellectual freedom and censorship," said Kathleen T. Horning, ALSC president. "'Kids, Know Your Rights!' fills that void admirably, and we applaud the Intellectual Freedom Committee for their positive steps to educate young people of their rights and responsibilities."

ALSC encourages librarians and educators to download, print, and use "Kids, Know Your Rights!" with children and students in their communities. It is an ideal giveaway for libraries that celebrate Banned Books Week and The September Project. ☐

Norma Gabler, leader of textbook crusade dies at 84

Norma Gabler, a Texas homemaker who recoiled at material in her children's textbooks and became the public face of a crusade with her husband to rid schoolbooks of content they considered anti-family, anti-American, and anti-God, died on July 22 in Phoenix. She was 84. The cause was Parkinson's disease, her son James said.

From its origins at the Gablers' kitchen table in Hawkins, Texas, in 1961, to its incorporation as Educational Research Analysts in 1973, the mom-and-pop textbook-criticism enterprise grew to occupy a prominent niche in the nation's conservative pantheon. For more than four decades, the couple influenced what children read, not just in Texas, but around the country.

The reason was Texas' power to be a national template; the state board chooses textbooks for the entire state, and of the twenty or so states that choose books statewide, only California is bigger than Texas. It is difficult and costly for publishers to put out multiple editions, so a book rejected by Texas might not be printed at all.

In 1982, Anthony T. Podesta, executive director of People for the American Way, a liberal group, said, "Texas has the buying power to influence the development of teaching materials nationwide, and a textbook edition chosen for Texas often becomes the sole edition available."

The Gablers were first to seize on the Texas textbook process as a means of pushing their conservative principles, and their success baffled and angered civil liberties advocates and progressive educators. Publishers, with much to lose if Texas rejected their books, were often willing to make changes to please the Gablers.

Mrs. Gabler, always with a smile and careful, precise diction, usually testified at textbook hearings rather than her shyer husband, Mel. She argued for more instruction in morality, free-enterprise economics, phonetics, and weaknesses in evolutionary theory.

The Gablers had a double-barreled strategy: in addition to pressing issues of ideology, interpretation, and philosophy, the Gablers ferreted out errors of fact. In 2001, *Time* magazine reported that their "scroll of shame" of textbook mistakes since 1961 was fifty-four feet long. In the early 1990s, Texas fined publishers about $1 million for failing to remove hundreds of factual errors the Gablers had found in eleven history books.

But the Gablers' most important battles concerned bigger issues, such as making publishers define marriage as a lifelong union between a man and a woman.

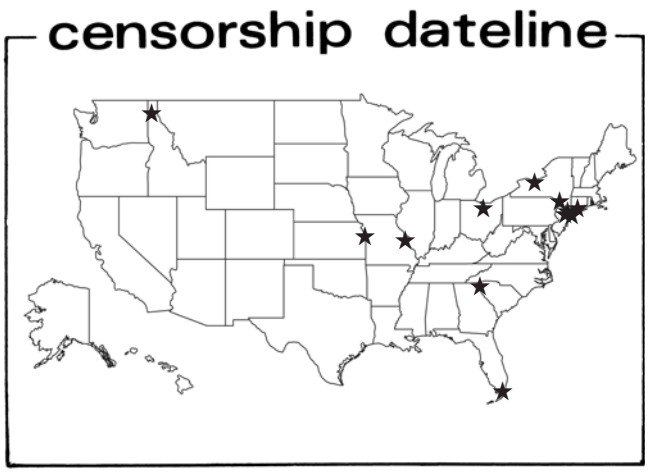
From the kitchen in Hawkins, about one hundred miles east of Dallas, their piles and piles of books and notes spread throughout their house. They worked by what they called the three Ps—prayer, preparation, and persistence—as they geared up for their once-a-year trips to Austin, the state capital, to ride herd on textbooks. There, each academic subject—English, say—is reviewed on an eight-year cycle in a system established a century ago to create an organized buying system to negotiate lower prices. It also was intended to improve the quality of books used in rural areas.

Born Norma Elizabeth Rhodes in Garrett, Texas, on June 16, 1923, Mrs. Gabler did not go to college. Her husband of sixty-two years, Melvin Nolan Freeman Gabler, attended for a year. He worked in the oil fields, served in the Air Force during World War II, was a clerk for thirty-nine years for Esso, now part of Exxon-Mobil, and died in 2004.

Neal Frey, who has worked with Educational Research Analysts since 1972 and is now president, said that Mrs. Gabler's larger public role was deceptive. "Mr. Gabler wore the pants in that family, and Mrs. Gabler wanted it that way," he said in an interview.

Together, they were "the most effective textbook censors in the country," *Creation/Evolution,* a publication of the National Center for Science Education, said in 1982. It went on to point out that while the Gablers derided textbooks that left out alternatives to evolution, they opposed alternative interpretations of American history they deemed negative. They objected to an Edgar Allan Poe story as gruesome. Texts that raised questions without firm answers were suspect.

Famously, in 1973, they flinched at a fifth-grade American history text that devoted more attention to Marilyn Monroe than to George Washington. "We're not quite ready for Marilyn Monroe as the mother of our country," Mrs. Gabler said. Reported in: *New York Times,* August 1. ☐



libraries

Miami, Florida

A three-judge panel of the U.S. Court of Appeals for the Eleventh Circuit heard arguments June 6 in a lawsuit against the Miami-Dade County School Board for ordering the removal of the children's book *Vamos a Cuba* and its English-language counterpart, *A Visit to Cuba,* from elementary school libraries. The board's attorney, Richard Ovelmen, told the judges that "The books are rife with factual omissions, misrepresentations, and inaccuracies that render them educationally unsuitable," adding that they fail to mention that Cuba is a dictatorship.

However, ACLU of Florida executive director Howard Simon countered, "There's a difference between a book not being complete and a book being inaccurate. All a publicly elected body has to do to ban a book is utter the word inaccurate? If that's the case, every library administrator and library association in the country should be worried."

On July 24, 2006, U.S. District Court Judge Alan S. Gold upheld the ACLU of Florida's request for an injunction against the school board's decision on First Amendment grounds, but the board appealed the case, arguing that the book inaccurately portrayed life in Cuba.

The 2001 picture book by Alta Schreier sports a cover that shows smiling children wearing the uniforms of Cuba's communist youth group, and one page claims that Cuban children "eat, work, and go to school like you do." Circuit Judge Ed Carnes questioned the statement, saying "That's simply not true." Senior District Court Judge Donald E. Walter compared the book to a hypothetical one about Adolf Hitler that touted the invention of the Volkswagen but failed to mention the Holocaust.

JoNel Newman, an attorney for the ACLU, told the panel that *Vamos a Cuba* does not include political information. "The political reality in Cuba is not part of what this book is about," she said. "Books for four- to seven-year-olds can't tell everything."

Will Weissert, a Havana correspondent for the Associated Press, wrote in a May 16 column that appeared in the Olympia (Wash.) *Olympian* that posters on the walls of the Cuban National Library show a picture of the book's cover with the word "censored" across it. "In Miami, Cuban children's smiles bother them," a caption explains. Reported in: American Libraries Online, June 8; *New York Times,* June 7*; South Florida Sun-Sentinel,* June 7.

Coeur d'Alene, Idaho

Checking out a copy of *I Know Why the Caged Bird Sings* by Maya Angelou may require more than a library card in the Coeur d'Alene School District if some parents have their way. Some parents say the book, along with five others, should require parental permission for students to read them. On June 11, the school board was set to take a closer look at the books in question and its policies in checking out certain books.

The books in question include *Fallen Angels* by Walter Dean Myers, *The Chocolate War* by Robert Cormier, *Snow Falling on Cedars* by David Guterson, *Beloved* by Toni Morrison, and *Dancing at the Rascal Fair* by Ivan Doig in addition to *I Know Why the Caged Bird Sings*. *Dancing at the Rascal Fair* came under fire a year ago after one student and several parents said sexual descriptions in the book were not appropriate.

One parent also wants the district to require classroom guests and speakers to submit audio and video recordings of their presentations before they arrive. Reported in: KXLY.com, June 4.

St. Louis, Missouri

St. Louis–area resident Richard Greathouse has called for Jefferson County Public Library to remove the free weekly *Riverfront Times* newspaper from distribution there. Greathouse saw the paper while he took his thirteen-year-old son to the library's Northwest Branch to research birds, and complained to library director Pam Klipsch. "The content of this thing really upset me," Greathouse said. "They use the 'F' word in there."

"We have many patrons who read the *Riverfront Times* for a variety of reasons," Klipsch said. "I apologized to

Mr. Greathouse and told him I was very sorry that he was offended. But [the *RFT*] is a legal publication and we live in a country where everyone is given a very wide latitude to pick and choose what we want to read or view, and the question of taste is up to each individual to judge for himself or herself." Klipsch said that the library had received a few calls expressing support for her position and none in opposition. She also said that Greathouse had not taken any steps to have the paper removed beyond his verbal complaint.

"It's kind of ironic that in a country where we can say what we want, someone would want to muzzle a voice because he thinks it doesn't conform to what he thinks a proper publication is," *Riverfront Times* editor Tom Finkel said. "As director of the library, [Klipsch] is striking a blow for an open society." Reported in: American Libraries Online, June 29.

Otisville, New York

Inmates at the federal prison camp in Otisville were stunned by what they saw at the chapel library on Memorial Day—hundreds of books had disappeared from the shelves. The removal of the books is occurring nationwide, part of a long-delayed, post–Sept. 11 federal directive intended to prevent radical religious texts, specifically Islamic ones, from falling into the hands of violent inmates.

Three inmates at Otisville filed a lawsuit over the policy, saying their constitutional rights were violated. They say all religions were affected. "The set of books that have been taken out have been ones that we used to minister to new converts when they come in here," inmate John Okon, speaking on behalf of the prison's Christian population, told a judge.

Okon said it was unfortunate because "I have really seen religion turn around the life of some of these men, especially in the Christian community."

The government maintained that the new rules don't entirely clear the shelves of prison chapel libraries. Assistant U.S. Attorney Brian Feldman told U.S. District Judge Laura Taylor Swain that prison libraries limited the number of books for each religion to between 100 and 150 under the new rules. He said officials would expand the number after choosing a new list of permitted books.

Feldman said the removal order stemmed from an April 2004 Department of Justice review of the way prisons choose Muslim religious services providers. It is not exactly clear why it took so long for the order to be put into effect, but prison officials said they needed time to examine a long list of books.

Feldman said the study was made out of a concern that prisons "had been radicalized by inmates who were practicing or espousing various extreme forms of religion, specifically Islam, which exposed security risks to the prisons and beyond the prisons to the public at large."

Feldman said the review by the U.S. Bureau of Prisons (BOP) concluded that prison chapel libraries were not adequately supervised. "The presence of extremist chaplains, contractors, or volunteers in the BOP's correctional facilities can pose a threat to institutional security and could implicate national security if inmates are encouraged to commit terrorist acts against the United States," the bureau's report said.

The review suggested audio and video monitoring of worship areas and chapel classrooms and screening of religious service providers. It also recommended that prisons reduce inmate-led religious services and consider constant staff monitoring of inmate-led services.

Feldman said inmates are permitted to order books on their own and bypass the chapel libraries. "So fundamentally this is not a case about what books the inmates have the ability to read," he said. However, inmates say the rules have had a chilling effect.

Inmate Moshe Milstein told the judge by telephone that the chaplain at Otisville removed about six hundred books from the chapel library on Memorial Day, including Harold S. Kushner's best-seller *When Bad Things Happen to Good People,* a book that Norman Vincent Peale said was "a book that all humanity needs."

"There is definitely irreparable harm done to us already, and we would like the court to issue the injunction to get the books back as soon as possible," he said.

Inmate Douglas Kelly, who described himself as a representative of the prison's Muslim community, complained of "a denial of our First Amendment rights." He said books on Islam already were the least represented in the library's collections and were reduced by half in the Memorial Day removal. "A lot of what we are missing were definitely prayer books or prayer guides and religious laws on the part of the Muslim faith," he said.

The judge said the lawsuit might be premature because the inmates had not yet followed prison administrative complaint procedures. She declined to block the book removals, the remedy sought by the lawsuit.

Ron Kuby, a civil rights lawyer who has represented a former head Islamic chaplain banned from the state prison system after he was accused of making extremist statements, called the prison book removal "a mass Memorial Day book burning." But he also said there might be limits to relief the prisoners can seek because prisoners' First Amendment rights are severely limited. Reported in: Associated Press, June 10.

Rochester, New York

In response to a threat from Monroe County executive Maggie Brooks to deny $6.6 million to the Rochester Public Library Central Library—which is funded by the county and serves both systems—if Internet pornography were not banned, the Monroe County Library System board agreed

May 23 to make its policy more restrictive. Previously, the filter would be disabled on request by adults, no questions asked, as per the American Library Association's interpretation of the U.S. Supreme Court's Children's Internet Protection Act (CIPA) decision.

Now, the library will block sites identified by the library's filtering vendor as pornographic until a designated library staffer, upon written request, determines, "after reviewing the site against the criteria contained in the Library Collection Development Policy that the site should be unblocked." The recommendation for change came from the Joint Monroe County Library System and Rochester Public Library Internet Task Force. The library already had stopped disabling the filter after Brooks sent her February 21, 2007, letter, prompted by a television news report about "porn in the library."

While the policy states that the unblocking determination "should be made without undue delay," library spokeswoman Patricia Uttaro said that "we haven't talked yet about the procedural implementation." The policy would cover all libraries in the county, some of which also have been disabling the filter on request. The task force pointed out that, while filtering software has improved, all systems overblock and underblock. Because the filter used by the library, from the company 8e6, filters Web sites, not Web pages, it blocks, for example, articles and reviews from *Playboy*'s Web site that do not contain sexual content.

The task force, formed after Brooks issued her threat, acknowledged that the recommended policy "represents a departure from prior considered opinion regarding the obligation of a public library to remove filtering 'without undue delay' [for] sites of constitutionally protected (not illegal) material blocked by filtering solutions and might subject the implementing entity to a suit from a group such as the ACLU." Such a suit is pending in eastern Washington.

The task force report also acknowledged that any protocol that requires library staff (other than the director and assistant director) to view sites deemed pornographic while considering unblocking requests could subject the library to a hostile environment discrimination complaint.

While the Rochester Public Library Board has no oversight over city and county library Internet access, board president John Lovenheim called the proposed policy the library would adopt "censorship, pure and simple." Lovenheim suggested that the recommended policy be approved only through September 30, 2007, Uttaro said, and challenged his board to recommend that the Monroe County Legislature pass a law that prohibits viewing pornography in public places, thus taking the onus off the library. Reported in: *Library Journal,* May 24.

Pickens County, South Carolina

Pickens County Library System (PCLS) officials withdrew the library's participation in a nationwide teen reading program within days of its scheduled June 7 launch due to eleventh-hour threats against the library, PCLS director Marguerite Keenan said. "My understanding is that it was announced at a church service that we were promoting witchcraft and teaching other religions in our young adult program," Keenan explained, saying that the library received one call stating they were "going to get us" and threatening to picket. Faced with the prospect of "having children walk through pickets was just horrible, so from that perspective, we decided we would just cancel [the entire series]."

"We weren't against the reading program itself at all," asserted pastor David Gallamore. He acknowledged telling parishioners of the Rock Springs Baptist Church in Easley, South Carolina, about PCLS's mystery-and-suspense-themed "You Never Know @ your library®" summer series and his objections to horoscopes and Tarot cards being part of the June 14 "What's Your Sign?" evening. "We just want our children being taught the right things," he added.

The controversial activities were among those suggested by the Collaborative Summer Library Program for Highsmith's prepackaged 2007 summer reading program, which has garnered participation from libraries in forty states.

According to Keenan, the teen summer programming traditionally draws a few youngsters from Pickens County's population of 110,000 overall. However, the 2007 program might have seen an upward spike: media specialist Christina Connell of the Gettys Middle School in Easley said that she had pitched it to the 1,400 students at her campus, which is two blocks from PCLS's Hampton Branch, and that "they were really excited about it." Connell went on to contend that the library is "sending the wrong message to teens, who will feel that they are not important enough to fight for, and to the church groups, who will only be empowered to launch further crusades against books."

"Maybe I was taking a worst-case-scenario approach," Keenan reflected, "but to me the safety of the children we invite in here to our summer programs—the elementary schoolchildren and the preschoolers—is very, very important." Reported in: American Libraries Online, June 8.

schools

Newark, New Jersey

A photograph of an East Side High School student kissing his boyfriend was blacked out of every copy of the school's yearbook by Newark school officials, who decided it was inappropriate.

Andre Jackson said he never thought he would offend anyone when he bought a page in the yearbook and filled it with several photographs, including one of him kissing his boyfriend. But Newark superintendent of schools

Marion Bolden called the photograph "illicit" and ordered it blacked out of the $85 yearbook before it was distributed to students at a banquet for graduating seniors in June.

"It looked provocative," she said. "If it was either heterosexual or gay, it should have been blacked out. It's how they posed for the picture."

Russell Garris, the assistant superintendent who oversees the city's high schools, brought the photograph to Bolden's attention. He was concerned the picture would be controversial and upsetting to parents, Bolden said.

There are several photos of heterosexual couples kissing in the yearbook, but the superintendent said she didn't review the entire yearbook and was presented only with Jackson's page.

Ripping the page out entirely was considered but, Bolden said, it was decided blacking it out with a marker would lessen the damage to the yearbooks. Jackson said he showed up at the banquet, excited to collect his yearbook. He'd paid an additional $150 for the special tribute page filled with shots of boyfriend David Escobales, of Allentown, Pennsylvania, and others. Jackson learned what happened to his page moments before the books were distributed.

While the students waited, staff members in another room blacked out the 4-and-a-half-by-5-inch picture from approximately 230 books.

"I don't understand," said Jackson. "There is no rule about no gay pictures, no guys kissing. Guys and girls kissing made it in."

East Side's is similar to most high school yearbooks. About eighty pages in the roughly one-hundred-page tome is dedicated to class photos, formal shots of seniors, candids, and spreads dedicated to a variety of sports teams and academic clubs. The back of the book is a collection of tributes, where students designed pages filled with pictures depicting them with their families, girlfriends and boyfriends, and friends. Rules for publication of the pages prohibited shots of gang signs, rude gestures, and graphic photos, said Benilde Barroqueiro, an East Side senior graduating with Jackson.

"You know, it couldn't be too provocative. No making out, no tongue," she said.

Students were surprised when they opened their books and found Jackson's picture had been covered with marker, Barroqueiro said. "He purchased the page and fell under the rules," she said. "If they want to kiss, that's their page. If you don't like it, don't look at it." Reported in: *Newark Star-Ledger,* June 22.

Commack, New York

Gabrielle Henis thought she'd get an early start on her summer reading when she began *The Perks of Being a Wallflower*. Like Henis, the narrator is a high school freshman. It opens with Charlie writing a letter in which he longs for someone who "listens and understands." But when Henis got to pages thirty to thirty-one, she had to put it down.

That's where Charlie describes watching a date rape: "He reached to take off her pants, but she started crying really hard, so he reached for his own." The boy pushes the girl's head down to perform oral sex. "It was kinda gross," Henis said.

Her mother, Cindy Henis, said the book is too graphic and wants it off Commack High School's summer reading list. "I'm so upset she even read anything like that," Cindy Henis said, adding she herself will not read the entire book.

The novel has raised controversy across the country. In 2003, Massapequa High School officials told a teacher to stop using it in sociology class after a parent complained. The book is on the American Library Association's 2006 list of books that have been the subject of the most complaints and requests they be removed from libraries.

Cindy Henis' concerns reflect ongoing questions educators and parents face over the role of literature in exposing teens to real-life issues. "The scenes may be graphic, but date rape is a problem among young people today," said Rob Linne, professor of adolescent education at Adelphi University.

But to Henis, it's tantamount to pornography.

The book's author, Stephen Chbosky, said he's used to pages thirty to thirty-one causing a stir. He doesn't understand why those who complain don't see that Charlie was very disturbed by the scene.

"I did not write that section to be at all titillating or sexy," he said. "To me, rape is violent and brutal. I wanted to break the silence for young people, especially young women."

Local school officials say they consider issues such as appropriateness and relevance in their varied ways of putting together summer reading lists. In nearby West Babylon, the same reading list was used for years until teachers noticed students weren't reading the offerings. This year, students were given a voice, said Carol Varsalona, director of language arts and testing. Students researched books, polled their classmates, and made suggestions.

Educators in Commack revamped their reading list last year also after finding students weren't interested in the choices; a committee of teachers, students, parents, librarians, and administrators was formed.

David Weiss, Commack's assistant superintendent for secondary education, said *Perks* was chosen partly to attract "reluctant readers."

The book is popular—about 700,000 copies have been printed since it was released in 1999. It's currently on high school summer reading lists locally, such as in Port Washington and a Catholic school in Brooklyn, and in such states as Massachusetts and New Jersey.

"There may be portions taken by themselves that could be deemed inappropriate," Weiss said. "You can't take it

out of context. . . . The theme of the book is about a student being an outcast."

Still, Henis's disapproval will be taken into consideration when re-evaluating the list, Weiss said. He planned to reread the book and invite Henis to join the list committee.

No one has complained about *Perks* being on the summer reading list at Watchung Hills Regional High School in Warren, New Jersey, even though parents have objected to *Running with Scissors* by Augusten Burroughs, said English department supervisor William Ross.

Chbosky said he understands Cindy Henis' concerns: "I would be very sad if the school district didn't provide a choice because it's not for everybody, and I know that."

Henis said she's not satisfied with the high school English department chairwoman's response to "choose another title." The other books, Henis said, weren't as appealing to teens.

"Of course they would pick that book," said New York University education professor Jonathan Zimmerman. "Even the title alludes to something that's in their experience." Reported in: *Newsday,* June 18.

New York, New York

A furor has erupted at a New York City private high school over a history teacher's satirical novel, his impending departure, and accusations that administrators barred the student newspaper from publishing a letter by prominent historians and scholars who had come to the teacher's defense. The controversy has divided teachers, parents, and students at the Horace Mann School, a private school in the Riverdale section of the Bronx.

The Record, the student newspaper, published an editors' note May 29 stating that the head of the school, Thomas M. Kelly, had forbidden the editors from publishing two letters and an opinion essay concerning the case of the history teacher, Andrew S. Trees.

Trees had published a novel last year, *Academy X,* that poked fun at the mores and foibles of affluent children and their overbearing parents at a fictional elite school. His narrator, a teacher named John Spencer, calls the school an "ethical wonderland" and laments the antics of Caitlyn Brie, a pampered student at the school. Trees's annual contract to teach at the school was not renewed for the next school year, prompting an outcry from some teachers and students.

In a letter to the student newspaper, a fellow history teacher, Peter P. Sheehy, wrote that the novel "has angered some because the themes and issues he explores correspond very closely to issues with which we struggle." While some believe "the novel reflects poor taste," he added, "such critiques do not warrant the punishment of an author or artist who says something unpopular or controversial."

According to *The Record,* some 150 students signed a petition in defense of Trees. In an editors' note, *The Record* stated that it had received two letters and an opinion essay in response to Sheehy's letter, but that Kelly had prohibited their publication because "'personnel issues' should not be 'vetted' in the paper."

The letter, which was published by an Internet blog and obtained independently by the *New York Times,* was signed by dozens of prominent historians, including Eric Foner of Columbia University, William H. Chafe of Duke University, and Julian Bond of the University of Virginia, who is a former chairman of the NAACP.

"We were shocked and disappointed that the Horace Mann School would dismiss a faculty member for writing a novel, and we applaud the many Horace Mann students who courageously and thoughtfully protested this action," the letter stated.

Trees graduated from Princeton in 1990 and received a doctorate in history from the University of Virginia in 1999. His dissertation adviser there, Peter S. Onuf, is among those who signed the letter.

Andrew B. Lewis, a visiting assistant professor of history at Hamilton College in Clinton, New York, and a friend of Trees's from graduate school, said he was not surprised that so many would come to Trees's defense. "Even if, on the surface, he's only a teacher at a prep school, people in the profession know and respect Andy Trees and are willing to sign onto this," Lewis said. "Many of these are civil rights historians who are appalled at the notion that an institution would fire somebody for writing satire." Reported in: *New York Times,* June 1.

Sleepy Hollow, New York

This spring, just about the time when John Jay High School in Cross River was making headlines for banning the use of the word "vagina" in a reading of *The Vagina Monologues,* a group of students at Sleepy Hollow High School approached the administration about putting on *The Laramie Project,* a play that explores the killing of Matthew Shepard, a gay student at the University of Wyoming, who was beaten, tied to a fence and left to die on the outskirts of Laramie.

Students from Sleepy Hollow High School's Gay-Straight Alliance considered the play's message powerful and wanted to stage a production. But high schools are not independent theaters, and the students soon found themselves negotiating with the principal about the use of profanity in the play.

To the students, it was a question of censorship. "It was agony," said Emili Feigelson, co-president of the alliance. "The play is taken from interviews, and we were very worried about maintaining the play's artistic integrity."

To the administration, it was simply school policy. The play was reviewed using the same standards applied to any other school event. "We have a code of conduct, and it specifies language guidelines," said Howard W. Smith,

superintendent of the Tarrytown schools. "It's ironic that given the subject matter, the subject matter itself was never controversial. It was just the language. We are a school, and there are generally accepted standards."

Students worked with a teacher to come up with an edited version of *The Laramie Project.* "We decided the message was more important than keeping in the words, so we edited it and the principal approved it," Emili said.

While they were in the midst of trying to find a school site for the production—the high school auditorium is under construction—a staff member at the Jacob Burns Film Center in Pleasantville heard about the students' efforts. The center was presenting its "Out at the Movies" lesbian, gay, bisexual, and transgender film series, so it seemed fitting to offer the theater for a reading, said Kathryn Bonomi, a film programmer there. Bonomi also invited a cast member from the Tectonic Theater Project, which first created *The Laramie Project,* to work with the students.

The students presented their reading at the film center on May 23, in a production that was not formally affiliated with the school. Still, the audience was filled with Sleepy Hollow students and parents. Smith also came to see the show. Afterward, the eight performers, not all of whom are in the Gay-Straight Alliance, talked about their experience.

"It's the only thing besides *Saving Private Ryan* that made me cry," said Anthony Hinds, a seventeen-year-old junior. "It opened up how much homophobia was in our schools. All of the sudden a filter was taken out of my mind. Now, when my friends say, 'Oh, that's so gay,' I say, 'Listen to what you're saying. I know you're not homophobic, so why would you say that?"'

Lucie Steiner, a senior and the co-president of the alliance, said: "It forces you to learn about people and relate to people you don't want to relate to. In the script, you see people as monsters saying things that your friends say every day."

Sleepy Hollow High School students aren't the first in Westchester to tackle *The Laramie Project*. Rye Country Day, Harrison, Croton-Harmon, Ossining, Pelham, and John Jay high schools have all staged productions.

The students were tentatively scheduled to read the edited version of the play at the W. L. Morse School, a Sleepy Hollow elementary school. Many were still unhappy about the editing. "It's dangerous to be safe," Lucie said. "The purpose of high school is to educate kids on things that matter, and this absolutely matters." Reported in: *New York Times,* June 3.

colleges and universities

New York, New York

St. John's University, one of the country's largest Roman Catholic universities, has decided not to allow Eve Ensler's *Vagina Monologues* to be performed on campus. Alisha Brizicky, a senior, had been planning to present three performances in February as part of the V-Day College Campaign, an annual festival that raises money to stop violence against women and girls. In December, administrators at the university's campus in Queens told Brizicky they would not allow the play to be performed on campus.

"We fully support the value of raising awareness and education on systematic violence against women," the Rev. James J. Maher, the university's vice president of student affairs, said in a statement. "As part of our obligation to the entire university community, we also reserve the right not to support student life activities that we deem inappropriate."

Brizicky is considering performing the play off campus. "I'd prefer it to be on campus," she said. "People here don't talk about things like this, and I want it to be as available to them as possible." Reported in: *New York Times,* January 21.

Ashland, Ohio

In late April, John D. Lewis, a historian and classicist at Ashland University, flew to Virginia to deliver a lecture at George Mason University about United States policy toward Iran. Lewis is an admirer of the late Ayn Rand, and he shares her belief that democracies should respond to external attacks without much concern for civilian casualties. He wrote in an essay in 2006 that "America, acting alone and with overwhelming force, must destroy the Iranian Islamic State now. It must do so openly, and indeed spectacularly, for the entire world to see, for this is the only way to demonstrate the spectacular failure and incompetence of the Islamic fundamentalist movement as a whole."

Lewis's bellicose reputation preceded him. His George Mason speech had already been postponed from its original February date because of protests from left-wing student organizations. When he finally delivered it, he did so under heavy security.

The postponement raised alarm bells. "George Mason may be the father of the Bill of Rights," wrote a reporter at *National Review,* "but it looks like the university named in his honor is having trouble with that part about free speech."

Student leftists, however, were not the only people challenging Lewis's academic freedom that week in April. Hours before he flew to Virginia, he resigned from his position at Ashland, in the culmination of a years-long faculty battle over his interest in objectivism, as Rand termed her philosophy. And in the Ashland arena, Lewis said, his foes were mainstream and evangelical Christians.

Lewis said his battles reflect the extraordinary and unfair degree of hostility that objectivists in academe receive from both left and right. "In the morning at Ashland, I was

resigning because conservatives and evangelicals were opposed to me," he says. "And then in the evening I was at George Mason, and there were some Muslims and this new student SDS opposed to me. I found that poignant."

Officials at Ashland have made their discomfort with objectivism abundantly clear. In January, the university rejected Lewis's application for tenure, and officials told him in writing that his support for objectivism was the sole reason for the denial.

A memo from Robert C. Suggs, who was then Ashland's provost, to Frederick J. Finks, the university's president, said that Lewis's tenure application was "a unique and particularly thorny one." Suggs wrote that Lewis's publications, teaching, and service all met or exceeded the university's tenure standards, but said that his support for objectivism, an atheist philosophy, "stands in unreserved opposition to the Judeo-Christian values found in the university's mission and the beliefs of the founding organization, the Brethren Church."

In the memo, Suggs conceded that Lewis had not proselytized objectivism in the classroom. But he argued that Lewis's scholarly publications expressed ideas that were contrary to Ashland's mission. He pointed in particular to Lewis's chapter in an edited volume, *Essays on Ayn Rand's Anthem* (Lexington Books, 2005). There Lewis celebrated Rand's "break with the Judeo-Christian condemnation of ambition and pride."

Lewis was floored by the rejection. "I was denied tenure explicitly on the basis of objectivism," he says.

"This was a very blatant case," said Anita Levy, an associate secretary of the American Association of University Professors (AAUP), which offered advice to Lewis at one stage of the dispute. "We don't often see such stark declarations at our office."

Lewis appealed the denial, saying it was arbitrary and discriminatory. He also hired a lawyer. Among other things, he argued that only two of the twenty-one scholarly publications he had submitted in his tenure file mentioned objectivism at all. His book on warfare, which is under contract with Princeton University Press for publication in 2009, will contain no explicitly objectivist arguments, he says.

On the morning of his George Mason lecture, Lewis and Ashland reached an informal settlement. Ashland granted him tenure—on the condition that he offer his resignation. The deal spared Lewis the indignity of having to explain to potential future employers why he was denied tenure, although he will not get the paychecks that usually come with that status. Lewis's resignation takes effect after the spring 2008 semester, but he will not return to the campus. He will spend 2007–2008 in a visiting appointment at Bowling Green State University in Ohio.

"Lewis is a classical scholar and an ancient historian of the highest order," a former colleague, C. Bradley Thompson, said. "This is a case of contract violation, religious persecution, and conservative political correctness." Thompson, a proponent of objectivism who taught at Ashland until 2004, is now a professor of political science at Clemson University.

But Finks, Ashland's president, said it is entirely appropriate for Ashland to defend its mission and identity by drawing certain lines in the sand. "Ashland has had a commitment to Judeo-Christian values since its founding 128 years ago," he said. "In our faculty rules and regulations, and even in our bylaws, we talk about having a faculty committed to Judeo-Christian values. We don't require faculty to be specifically of Judeo-Christian persuasion, but we do require faculty to support the mission."

Finks declined to speak about the dispute in detail. "The tenure application moved through normal channels," he said, "until there was a question—not an accusation, but simply a question—about whether some of his writings stand counter to Judeo-Christian values. . . . He was initially denied tenure and promotion, but he continued with the appeals process and was recommended for tenure."

AAUP's Levy acknowledged that institutions with strong religious identities do have "some leeway" in regard to academic appointments. In that respect, she said, the justice or injustice of Lewis's treatment hinges on how clearly the university explained its rules to him when he was hired.

Lewis said that Ashland's formal faculty regulations did not explicitly state how and why a faculty member's scholarship might violate the university's mission. The faculty's committee on professional standards and responsibilities, which supported Lewis's appeal, agreed. Without clearer rules, the committee wrote in an April memo to Suggs, "the decision must be viewed as arbitrary and a restraint on academic freedom."

Lewis and Thompson added that the mission argument was especially weak in this case because throughout Lewis's six years at Ashland, the university accepted grants from the Anthem Foundation for Objectivist Scholarship, a California-based organization that encourages the study of Rand's thought. The grants were used to pay for release time that allowed Lewis to concentrate on his research. "That release time was always approved by the dean," he said. The grant, he said, "was used to hire adjuncts."

Finks, however, said the grants Ashland accepted, while initially intended for the study of objectivism, were significantly revised in response to the university's concerns. "If you would read the grants, they are not for the promotion of that at all," he said.

The final Letter of Understanding between the university and the Anthem Foundation, provided by the foundation, however, appeared to contradict Finks's account. "The primary purpose of the fellowship is to fund release time so that Professors Thompson and Lewis can pursue research and writing on Ayn Rand's philosophy of objectivism," it reads.

In some respects, Lewis is an unlikely poster child for academic freedom. In his 2006 essay on Iran, he urged

Muslim intellectuals to renounce political Islamism or face "immediate, personal destruction." And he often writes and speaks on behalf of the Ayn Rand Institute, whose leaders are famously insistent on enforcing fidelity to Rand's beliefs, as they see them.

"We have to always make a judgment about things we put out, or things put out by people associated with us," said Onkar Ghate, dean of the Objectivist Academic Center, which is affiliated with the institute. "Are they going to be teaching, talking about, advocating Ayn Rand's ideas, or are they doing something else?"

John P. McCaskey, president of the Anthem foundation, said that if Ashland wanted to pursue a particular Christian mission, just as the Objectivist Academic Center pursues its own Randian mission, he had no objection to that. But he said he believes that Ashland acted wrongly by continuing to spend the foundation's money.

In a February letter to Finks that was sent after Lewis's tenure denial, McCaskey wrote, "If at some point the university decided that this was not a field in which it wanted its faculty working, there were several honorable options. This was not one of them."

Finks said that from his point of view, the episode, however painful, ended successfully. "I know that John had his own view of what was going on," he said, "but sitting at my desk I saw a larger picture, and our views didn't always mesh. He was ultimately granted tenure and promotion," said Finks. "I think it was a win-win." Reported in: *Chronicle of Higher Education,* July 5.

bookstores

New York, New York; London, England

Tintin in the Congo, an illustrated work removed from the children's section of Borders Group, Inc., stores in Britain because of allegations of racism, will receive similar treatment by the superstore chain in the United States.

"Borders is committed to carrying a wide range of materials and supporting our customers' right to choose what to read and what to buy. That said, we also are committed to acting responsibly as a retailer and with sensitivity to all of the communities we serve," according to a Borders statement issued July 9. "Therefore, with respect to the specific title *Tintin in the Congo,* which could be considered offensive by some of our customers, we have decided to place this title in a section of our store intended primarily for adults—the graphic novels section. We believe adults have the capacity to evaluate this work within historical context and make their own decision whether to read it or not. Other Tintin titles will remain in the children's section."

David Enright, a London-based human-rights lawyer, was shopping recently at Borders with his family when he came upon the book, first published in 1931, and opened it to find what he characterized as racist abuse. "The material suggests to [children] that Africans are subhuman, that they are imbeciles, that they're half savage," Enright said.

Enright took his complaint to the Commission for Racial Equality (CRE), which labeled the book racist and criticized Borders for stocking the title. A CRE spokeswoman said: "This book contains imagery and words of hideous racial prejudice, where the 'savage natives' look like monkeys and talk like imbeciles. How and why do Borders think that it's okay to peddle such racist material? Yes, it was written a long time ago, but this certainly does not make it acceptable. This is potentially highly offensive to a great number of people. It beggars belief that in this day and age Borders would think it acceptable to sell and display *Tintin in the Congo*."

In Britain, the book also will be stocked with graphic novels.

Ann Binkley, a spokeswoman for Borders in the United States, said no complaints have been received in this country. Little, Brown Books for Young Readers is publishing the book in the United States in September, one of many Tintin works being reissued to mark the centennial of author-cartoonist Hergé, the pen name of Georges Remi.

"This particular title, one of three originally unpublished in the U.S., may be considered somewhat controversial, as it reflects the colonial attitudes of the time it was created," reads a statement on Little Brown's Web site. "Hergé depicts African people according to the stereotypes of the time period, but in this edition it will be contextualized for the reader in an explanatory preface."

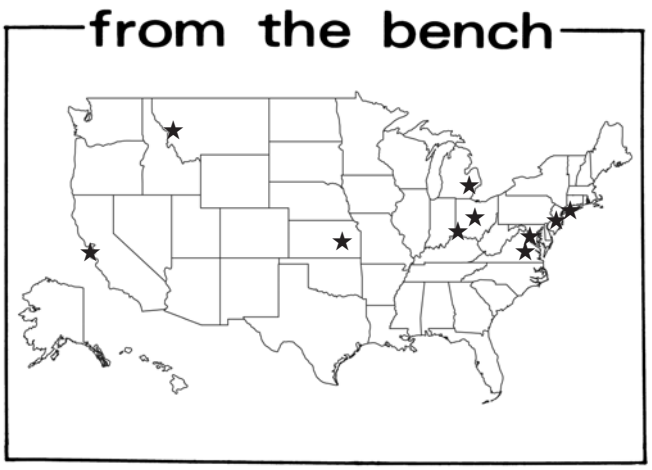
The book is the second in a series of twenty-three tracing the adventures of Tintin, an intrepid reporter, and his dog, Snowy. The series has sold 220 million copies worldwide and been translated into seventy-seven languages. But *Tintin in the Congo* has been widely criticized as racist by fans and critics alike. In it, Remi depicts the white hero's adventures in the Congo against the backdrop of an idiotic, chimpanzee-like native population that eventually comes to worship Tintin and his dog as gods.

Remi later said he was embarrassed by the book, and some editions have had the more objectionable content removed. When an unexpurgated edition was brought out in Britain in 2005, it came wrapped with a warning and was written with a forward explaining the work's colonial context.

Africa was hardly the only part of the world portrayed in stereotypes by Remi. *Tintin in the Land of the Soviets* was a rough take on Communist society, while *Tintin in America* was equally critical of United States capitalism.

Remi, a native of Belgium, died in 1983. Steven Spielberg and Peter Jackson each plan to direct at least one film in a series of three movies based on the Tintin adventures. Reported in: Associated Press, July 17; *London Telegraph,* July 12.

(continued on page 214)



U.S. Supreme Court

The Alaska high school student who unfurled a fourteen-foot banner with the odd message "Bong Hits 4 Jesus" insisted that it was a banner about nothing, a prank designed to get him and his friends on television as the Olympic torch parade went through Juneau en route to the 2002 Winter Games in Salt Lake City. The school's principal insisted, to the contrary, that the banner advocated, or at least celebrated, illegal drug use, and that the student, Joseph Frederick, should be punished for displaying it. She suspended him for ten days.

On June 25, by a narrow margin, the Supreme Court backed the principal in a decision that showed the court deeply split over what weight to give to free speech in public schools.

Six justices voted to overturn a federal appeals court's ruling that left the principal, Deborah Morse, liable for damages for violating Frederick's First Amendment rights. Chief Justice John G. Roberts, Jr., spoke, at least nominally, for five of the six. He said for the court that Morse's reaction to the banner, which was displayed off school property but at a school-sponsored event, was a reasonable one that did not violate the Constitution.

While the banner might have been nothing but "gibberish," the chief justice said, it was reasonable for the principal, who "had to decide to act—or not act—on the spot," to decide both that it promoted illegal drug use and that "failing to act would send a powerful message to the students in her charge, including Frederick, about how serious the school was about the dangers of illegal drug use."

He added, "The First Amendment does not require schools to tolerate at school events student expression that contributes to those dangers."

Four other justices, Antonin Scalia, Anthony Kennedy, Clarence Thomas and Samuel A. Alito, Jr., signed the chief justice's opinion, although Justice Thomas took a much different approach. He said that Frederick had no First Amendment rights to violate.

"In light of the history of American public education," Justice Thomas said, "it cannot seriously be suggested that the First Amendment 'freedom of speech' encompasses a student's right to speak in public schools." The court's precedents had become incoherent, he said, adding, "I am afraid that our jurisprudence now says that students have a right to speak in school except when they don't."

The sixth justice, Stephen G. Breyer, did not sign the chief justice's opinion, but wrote separately to say that the First Amendment issue was sufficiently cloudy that the court should have avoided deciding it. Instead, he said, the court should have ruled in the principal's favor on the alternative ground that she was entitled to immunity from the student's lawsuit.

Under the court's doctrine of "qualified immunity," government officials may not be sued for damages unless they have violated "clearly established" rights "of which a reasonable person would have known."

There were additional shades of opinion within the chief justice's majority. Justice Alito, joined by Justice Kennedy, wrote separately to emphasize what they said was the narrowness of the court's holding. They said the decision should be understood as limited to speech advocating drug use, and noted that the court had not endorsed the much broader argument, put forward by the Bush administration, that school officials could censor speech that interfered with a school's "educational mission."

The breadth of that argument had alarmed religious conservatives on the ground that school officials would get a license to enforce political correctness. Justice Alito, who had expressed a similar concern as an appeals court judge, said that the "educational mission" argument "strikes at the very heart of the First Amendment" by allowing school officials to "suppress speech on political and social issues based on disagreement with the viewpoint expressed."

Writing for the four dissenters, Justice John Paul Stevens said that even limited to drugs, the majority opinion distorted the First Amendment by "inventing out of whole cloth a special First Amendment rule permitting the censorship of any student speech that mentions drugs" in a way that someone might perceive as containing a "latent pro-drug message."

Justice Stevens said that "carving out pro-drug speech for uniquely harsh treatment finds no support in our case

law and is inimical to the values protected by the First Amendment." Noting that alcohol also posed a danger to teenagers, Justice Stevens wondered whether "the court would support punishing Frederick for flying a 'Wine Sips 4 Jesus' banner," which he said might be seen as pro-religion as well as pro-alcohol.

The dissenters, who also included Justices David H. Souter, Ruth Bader Ginsburg, and Breyer, agreed with the majority that the principal should not be held personally liable for monetary damages. Reported in: *New York Times,* June 26.

On June 25, the Supreme Court took a sharp turn away from campaign finance regulation, opening a wide exception to the advertising restrictions that it upheld when the McCain-Feingold law first came before it four years ago.

In a splintered 5-4 decision, Chief Justice John G. Roberts, Jr., said that as interpreted broadly by federal regulators and the law's supporters, the restrictions on television advertisements paid for from corporate or union treasuries in the weeks before an election amounted to censorship of core political speech unless those advertisements explicitly urge a vote for or against a particular candidate.

"Where the First Amendment is implicated," the chief justice said, "the tie goes to the speaker, not the censor."

Consequently, Chief Justice Roberts said, the only advertisements that can be kept off the air in the pre-election period covered by the law—the thirty days before a primary election and the sixty days before a general election—are those that are "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."

Describing and then dismissing the rationale for the advertising restrictions, Chief Justice Roberts used a phrase that seemed to sum up the new majority's view toward campaign finance regulation. "Enough is enough," the chief justice said.

The decision was a reminder of the ways in which the justices appointed by President Bush are moving the court. While Chief Justice Roberts's predecessor, Chief Justice William H. Rehnquist, was a dissenter when the court upheld the law four years ago, Justice Sandra Day O'Connor was in the 5-4 majority. Her successor, Justice Samuel A. Alito, Jr., voted with Chief Justice Roberts on Monday and, in fact, was the only justice to join his opinion fully.

Coming as the 2008 presidential race takes off, the campaign finance decision has the effect of jettisoning a major part of the McCain-Feingold law, which Congress passed in 2002 to curb the flow of unregulated soft money into federal election campaigns.

While the decision did not deal directly with the soft money ban, which is in a separate section of the law, election experts said the effect would be to undercut the soft money section as well as permit a largely unlimited flow of money from corporate treasuries to pay for the all-important broadcast advertisements in the weeks before primary and general elections. Groups seeking to influence the outcome of the election could easily sidestep the prohibition on explicit appeals for or against candidates, supporters of the law said.

Although the court's five most conservative justices voted in the majority, and the four more liberal justices were the dissenters, the outcome was not easy to categorize simply along ideological lines. Both sides of the campaign finance debate have always attracted unusual coalitions. Chief Justice Roberts pointed out in his opinion that among the groups supporting the challenge to the law, which was brought by the Wisconsin Right to Life, were the American Civil Liberties Union and the AFL-CIO, as well as the United States Chamber of Commerce and the National Rifle Association.

The dissenters, Justices David H. Souter, John Paul Stevens, Ruth Bader Ginsburg, and Stephen G. Breyer, said the decision stood the court's earlier interpretation of the statute "on its head" and would invite the "easy circumvention" of the sponsors' purpose.

The dissenters' argument that the court had effectively overruled its 2003 decision in *McConnell v. Federal Election Commission,* presented in an opinion by Justice Souter, found agreement among election law experts.

"Corporations received the victory that they did not achieve in 2003," said Edward B. Foley, a professor at the Moritz College of Law at Ohio State University.

It may be only a matter of time before the court reconsiders its 2003 decision upholding the constitutionality of the entire law, or at least expands its most recent decision to strike down any restriction on advertising. Three of the five justices in the majority, Antonin Scalia, Anthony M. Kennedy, and Clarence Thomas, declined to sign the chief justice's opinion because it did not take that step.

In fact, Justice Scalia, in a footnote to his separate opinion, agreed with the dissenters that the court has, in effect, already reversed the 2003 decision when it came to the advertising restriction. The decision changed the law so substantially that it "effectively overrules" the 2003 decision "without saying so," Justice Scalia said. And demonstrating that he does not consider the new chief justice immune from the insults for which his opinions are famous, he added: "This faux judicial restraint is judicial obfuscation."

Justice Alito indicated in a separate opinion that he, too, would be open to reconsidering the earlier decision, as "we will presumably be asked in a future case" to do.

Legal experts and political advocates said the ruling, *Federal Election Commission v. Wisconsin Right to Life, Inc.,* represented a swing back from a tighter approach toward regulating political contributions that peaked with passage of the 2002 law.

Congress enacted the law in part in reaction to a flood of special interest money into both parties. Throughout the

1990s, both parties had aggressively courted contributions to their allied party committees from corporations, unions, and wealthy individuals for the express purpose of winning elections.

These donations, known as soft money, thus circumvented the limits on campaign contributions under older campaign laws. The McCain-Feingold law sought to end the use of soft money in part by barring corporations and unions from contributing to parties or political action committees.

The new decision brings back soft money, said Kenneth A. Gross, a Washington lawyer who represents corporations in election law matters. "The significance of it is, you can use soft money to do these ads," he said. "This is a clear shot over the bow by this court that there is going to be less regulation of money in politics. The fulcrum has now shifted."

It remains to be seen how the Federal Election Commission applies the new ruling. The decision held that Wisconsin Right to Life had a constitutional right to run three television commercials in 2004 that criticized Senator Russ Feingold (D-WI) for helping to block Bush's judicial nominees. Contact the senator, the commercials said.

Wisconsin Right to Life conceded that the advertisements were prohibited by the statute because they named Feingold, who was seeking re-election; were intended to reach Wisconsin voters; and were to run during the law's thirty-day blackout period before the primary. So the question was whether they were nonetheless permitted by the First Amendment, as a special three-judge Federal District Court here held that they were. The decision upheld that ruling.

In its decision in 2003, the Supreme Court ruled that the advertising restriction was not unconstitutional "on its face." Although many assumed that the ruling ended the matter, James Bopp, Jr., Wisconsin Right to Life's counsel, pressed for the right to challenge the restriction "as applied" to his group and others like it, which he said were engaged in constitutionally protected issue advocacy, albeit with corporate contributions.

In its last term, the Supreme Court gave the go-ahead for "as applied" challenges, a signal that the court might soon be taking a different view of the law.

The law's supporters, including Fred Wertheimer, a longtime advocate of tighter campaign laws, asserted that a remaining part of the law, prohibiting federal officials from soliciting soft money, was still extremely important. McCain agreed. While calling the decision "regrettable," he pointed out that the solicitation ban was unaffected. "Fortunately, that central reform still stands as the law," he said. Reported in: *New York Times,* June 26.

On June 25, the Supreme Court closed the courthouse door on a lawsuit challenging the Bush administration's use of taxpayer money to support its Office of Faith-Based and Community Initiatives. By a vote of 5-4, the court ruled that taxpayers could not sue to block federal expenditures that they allege violate the constitutional separation of church and state.

For thirty-nine years, the court has recognized an exception to a general rule that taxpayers do not have standing to sue to stop government expenditures with which they disagree. That exception, created in the 1968 case of *Flast v. Cohen,* allowed taxpayers to challenge spending on programs that they believed promoted religion. But the decision said that precedent did not apply in this case.

The five-member majority was split between those justices who would have overruled the precedent entirely and those who, interpreting it narrowly, held that it did not apply to the lawsuit at issue. While there was no opinion for the court, the narrower basis for disposing of the case prevailed in an opinion by Justice Samuel A. Alito, Jr., that was joined by Chief Justice John G. Roberts, Jr., and Justice Anthony M. Kennedy.

These three said that, properly interpreted, the *Flast v. Cohen* precedent permits taxpayer challenges to religion programs explicitly set up and specifically financed by Congress. As the Bush administration created the White House Office of Faith-Based and Community Initiatives by executive order and is paying for it out of general appropriations, the precedent does not apply, the three justices said.

The other two in the majority, Justices Antonin Scalia and Clarence Thomas, objected that "there is no intellectual justification for this limitation." Declaring that "if this court is to decide cases by rule of law rather than show of hands, we must surrender to logic and choose sides," Justice Scalia made clear which side he was on, in an opinion that Justice Thomas signed. *Flast v. Cohen* was "an inkblot on our jurisprudence," they said.

The dissenters also objected, from the other direction, to the distinction that the Alito opinion drew. "If the executive could accomplish through the exercise of discretion exactly what Congress cannot do through legislation, Establishment Clause protection would melt away," Justice David H. Souter wrote in a dissenting opinion that was also signed by Justices John Paul Stevens, Ruth Bader Ginsburg, and Stephen G. Breyer.

The case began as a lawsuit brought against the administration in 2004 by a secular advocacy group, the Freedom from Religion Foundation, to challenge the constitutionality of conferences that the White House Office of Faith-Based and Community Initiatives has been running to instruct religious organizations on how to apply for federal grants.

Annie Laurie Gaylor, co-president of the foundation, said that her organization, based in Madison, Wisconsin, was relieved that the court had not used the case as an occasion to overturn *Flast v. Cohen*. She said that many of the foundation's other cases were either challenges to state programs in state court, or challenges to federal programs established by Congressional action. Neither category of

lawsuits will be affected by the ruling *Hein v. Freedom From Religion Foundation*.

Justice Alito's opinion, while concluding that "we leave *Flast* as we found it," was implicitly quite critical of the precedent. "It is significant that, in the four decades since its creation, the *Flast* exception has largely been confined to its facts," he said. That is a description of a decision that has become a dead end in the law, a description that often precedes a decision to revisit and overrule such a precedent.

But it was apparent from a brief concurring opinion by Justice Kennedy that the day of reckoning has not yet arrived for *Flast v. Cohen*. Justice Kennedy described the Establishment Clause in the First Amendment as conveying "the Constitution's special concern that freedom of conscience not be compromised by government taxing and spending in support of religion." He added, "In my view the result reached in *Flast* is correct and should not be called into question."

However, Justice Kennedy said, he agreed that the precedent should be limited as Justice Alito's opinion proposed. Otherwise, he said, "courts would soon assume the role of speech editors for communications issued by executive officials and event planners for meetings they hold." Reported in: *New York Times,* June 26.

The Supreme Court on June 21 rejected the claim by a high school football powerhouse in Tennessee that its coach's recruiting violations were a form of free speech that could not be penalized by the state athletic association.

The 9-0 opinion removed a cloud over the ability of school sports associations to impose recruiting rules on their member schools and to punish violators. The dispute between the Tennessee Secondary School Athletic Association and Brentwood Academy, a private Christian prep school that has won ten state football championships, goes back ten years, when a group of eighth-grade boys who had not yet enrolled at the school received letters from "your coach" urging them to come out for spring practice.

There was no dispute at the court that the letter violated the state association's no-recruiting rule. The question for the justices was whether, as two lower federal courts had decided, the rule violated Brentwood's right to free speech as protected by the First Amendment.

It did not, Justice John Paul Stevens wrote for the Supreme Court, because "Brentwood made a voluntary decision to join" the Tennessee Secondary School Athletic Association and to abide by its rules. "It is only fair that Brentwood follow them," he said.

Stevens added that the rule in question reflected a "common-sense conclusion that hard-sell tactics directed at middle school students could lead to exploitation, distort competition between high school teams, and foster an environment in which athletics are prized more highly than academics."

While ruling for the association, the justices did not accept its further invitation to revisit an earlier decision that had elevated the controversy to one of constitutional dimensions. Six years ago, the Supreme Court held that while the association was nominally private, its operations were so intertwined with government functions as to make it a "state actor," subject to the Constitution's restraints as a government agency would be. Groups representing girls and women in sports had feared that they would be hampered in their ability to challenge unequal treatment if the court relieved high school sports associations from having to follow the Constitution. Reported in: *New York Times,* June 22.

The Alliance Defense Fund, a law firm representing the Faith Center Church Evangelistic Ministries, asked the U.S. Supreme Court on June 7 to overturn a September 2, 2006, federal appeals court ban on conducting worship services at the Contra Costa County (Calif.) Library's Antioch Branch.

The 2-1 ruling by the U.S. Court of Appeals for the Ninth Circuit in San Francisco in September overturned a May 23, 2006, district court injunction that allowed the Faith Center to use the library's public meeting rooms for worship. The religious group used the rooms in May 2004, but was denied permission two months later when the library characterized the church's gatherings as a worship service rather than a religious discussion. In December 2005, the Bush administration filed papers in support of the Faith Center's case.

"County officials should not treat religious expression as second-class speech," Alliance Defense Fund lawyer Benjamin Bull said. "Nothing in the Constitution requires the government to single out religious groups and censor their expression simply because their meetings have religious content." Reported in: American Libraries Online, June 15.

Putting its recent ruling on student speech into practice, the Supreme Court on July 1 rejected a school district's appeal of a ruling that it violated a student's rights by censoring his anti-Bush T-shirt.

A seventh-grader from Vermont was suspended for wearing a shirt that bore images of cocaine and a martini glass—but also had messages calling President Bush a lying drunk driver who abused cocaine and marijuana, and the "chicken-hawk-in-chief" who was engaged in a "world domination tour."

After his suspension, Zachary Guiles returned to school with duct tape covering the offending images.

Williamstown Middle School Principal Kathleen Morris-Kortz said the images violated the school dress code, which prohibits clothing that promotes the use of drugs or alcohol. An appeals court said the school had no right to censor any part of the shirt.

The High Court said schools could regulate student expression if it advocated illegal drug use. Justice Samuel Alito cautioned that schools could not censor political speech. The case is *Marineau v. Guiles*. Reported in: Associated Press, July 2.

library

Bloomfield Township, Michigan

In a split decision, the Michigan Supreme Court ruled July 26 in favor of Bloomfield Township Public Library's right to limit its book borrowing privileges to township residents only.

In a 4-3 ruling, the court rejected a Bloomfield Hills resident's argument that the state constitution entitled him to a nonresident library card. The court reasoned that all Michigan residents have a right to the public library system, but not necessarily each individual library.

"(The state constitution) does not require each and every individual public library facility in Michigan to offer nonresident book borrowing privileges," Justice Stephen J. Markman wrote in a thirty-three-page opinion.

"I'm quite relieved," said Karen Kotulis-Carter, director of the Bloomfield Township Library, on the ruling. "It was an issue of fairness." Kotulis-Carter said it didn't make sense to give borrowing privileges to those who don't pay taxes to fund library operations.

Bloomfield Hills resident George Goldstone sought court intervention when he was denied a nonresident card in early 2005, even after offering to pay a fee. City residents had full access to the library for thirty-nine years under a contractual agreement until 2003, when library and city officials were unable to agree on financial terms to renew the contract. The library board of directors then voted to restrict borrowing to township residents only.

"There's a universal understanding that libraries exist so that people can become more educated and make more informed decisions," said Robert Toohey, Goldstone's attorney. "And the question is why the majority opinion doesn't see that."

But Justices Michael F. Cavanagh, Elizabeth A. Weaver and Marilyn Kelly did—in sixty-nine pages of dissent.

The ruling had libraries around the state heaving a sigh of relief, as an alternate ruling would have eliminated the incentive for communities without libraries to contract with neighboring ones, said Gretchen Couraud of the Michigan Library Association.

"If anyone had free access, then what community would be motivated to contract and help share costs?" she said.

There are roughly 206 such service contracts across Michigan that generate about $11 million for those libraries. Most library funding comes from local taxes, Couraud said. Reported in: *Detroit News,* July 27.

colleges and universities

Washington, D.C.

A federal court has ruled against a group of academics who challenged restrictions imposed by the Bush administration in 2004 that virtually ended academic travel to Cuba. The academics had argued that the restrictions violated academic freedom. But in an opinion handed down in late July, the judge ruled that the administration was acting within its rights, as the restrictions were intended to bolster efforts to bring down the Cuban government.

"We're disappointed that the decision seems to mechanically recite back the government's arguments," said Robert L. Muse, the lead lawyer for the plaintiffs. Muse said the academics would appeal the ruling.

The lawsuit was filed in June 2006 in the U.S. District Court for the District of Columbia by the Emergency Coalition to Defend Educational Travel, a group of about 450 faculty members and other higher-education professionals. The suit named as defendants the Treasury Department and its Office of Foreign Assets Control. Academic institutions wanting to send students or scholars to Cuba must obtain a license from the office.

The 2004 restrictions barred short-term study trips, allowing only visits lasting at least ten weeks. In addition, the colleges sponsoring the trips could no longer accept students from other institutions, and only full-time, tenured faculty members from the sponsoring institution could lead the trips. The number of study abroad programs to Cuba plunged from an estimated two hundred before the restrictions to only a handful today.

The plaintiffs had argued that the government could not tell colleges where they could or could not take students without "the weightiest considerations of national security."

But in her decision, Judge Ellen S. Huvelle said there need be only "an important or substantial government interest" to justify the restrictions. The government argued that the purpose of its policy was to "deny the Castro government hard currency" and to "hasten Cuba's transition to a free and open society."

The plaintiffs argued that the government's explanation was a spurious one, as Cuba earned little money from academic exchange. Muse estimated that approximately two thousand American undergraduates visited Cuba annually on academic programs before 2004, spending a total of about $2 million a year. By comparison, the Treasury Department continues to allow United States residents to send about $1 billion a year to family members on the island, he said.

The real purpose of the restrictions, said Muse, "was to secure the vote of Cuban-Americans in Florida in the 2004 elections."

In her opinion, Judge Huvelle rejected the academics' argument that by preventing them from taking students to study various aspects of Cuban society, the government was violating their academic freedom. Academic freedom was not affected, she said, because the travel restrictions were "content-neutral," meaning that the government did not tell colleges what they could teach, only where they could hold classes. Reported in: Chronicle of Higher Education online, August 3.

Emporia, Kansas

First Amendment lawsuits by student journalists at public universities become moot when the plaintiffs graduate, according to a decision by the U.S. Court of Appeals for the Tenth Circuit.

The ruling came in an appeal by two former editors of *The Kansas State Collegian,* who charged that their First Amendment rights were violated in 2004 when the university removed Ron Johnson, a journalism professor, as the newspaper's adviser. The appeals court ruled that "because defendants can no longer impinge upon plaintiffs' exercise of freedom of the press, plaintiffs' claims for declaratory and injunctive relief are moot." The court went on to say that "there is no reasonable expectation that [the former editors] will be subjected, post-graduation, to censorship by defendants."

The court noted that the current editors could sue over their First Amendment rights, but as they had not done so earlier, their interests could not be considered now.

Having decided that the suit was moot, the appeals court rejected it, and did not consider the merits of the arguments.

The ruling could hinder First Amendment suits by students. Such litigation typically takes a long time, and it would be hard for a case brought by editors to proceed very far before someone graduates.

Mark Goodman, executive director of the Student Press Law Center, issued this statement about the ruling: "The court created a standard for mootness that makes it impossible for virtually any student to make a First Amendment claim because they will graduate before their case is concluded. It's just plain wrong."

The Student Press Law Center was among several journalism groups that backed the Kansas State student journalists because of the First Amendment issues in the case. Johnson, who remains a journalism professor at the university, was dismissed in the wake of protests at Kansas State over the newspaper's perceived lack of coverage of diversity issues. Kansas State officials defended their decision by citing a "content analysis" they performed on the newspaper, which compared the number of articles of various type and the number of "diversity" items compared to those in other papers.

The students and journalism groups said this analysis was ultimately just a cover for making unconstitutional content-based decisions on the direction of the paper. The appeals court did not address those issues. Reported in: insidehighered.com, July 30.

Missoula, Montana

Public universities have the right to set limits on spending in student government elections, even though the U.S. Supreme Court has barred such limits in federal and state elections as infringements on free speech, a federal appeals court ruled June 1.

A panel of the U.S. Court of Appeals for the Ninth Circuit issued the unanimous ruling in a case involving a challenge to a $100 spending limit set by the University of Montana. The court found that the university's educational mission—and the relationship between the rules on election spending and that spending—gave the university the right to limit the speech encompassed by campaign spending.

The ruling could be important for several reasons. Many public universities have rules that limit spending on student elections—rules that sometimes center in election disputes—and a federal appeals court ruling throwing out such rules could have led to plenty of other legal challenges. And the lawyer for the student who challenged the Montana rules sees the decision posing a threat to student rights that involve freedom of expression.

"The court has given carte blanche to state universities to regulate political speech by students," said James Bopp, Jr., the lawyer. "The court has adopted the position that First Amendment protections do not apply to political speech at public universities." Bopp said that he will be asking the full Ninth Circuit to reconsider the case, and that he would "seriously consider" an appeal to the U.S. Supreme Court.

Bopp's client is Aaron Flint, who sued the university after he was denied the right to take his seat as a senator in the campus government after he won an election in 2004 but exceeded the spending limit. The spending limit offense was a second violation for Flint, who had been permitted to hold office the previous year despite spending too much.

The appeals court acknowledged that the University of Montana is a state institution, and that campaign spending limits of the sort used by the university would be illegal if attempted for Montana state or federal office. But the court said it was wrong to treat the university as another unit of state government. "We may not simply ignore the facts that the campaign expenditure limitations in this case involved election to student government and that the expenditures occurred mostly, if not exclusively, on a university campus," the court found. In this "educational context," different standards should apply, the judges said.

The ruling also offered some logic for applying different standards for state and federal government and student government that may not go over well with campus politicos. In essence, the court ruled that different rules can apply because student governments don't have that much power. "The ubiquity with which political government is present to control facets of our lives is not—thank heavens!—replicated by student government in students' lives," the decision said.

Having determined that student government elections thus constitute a "limited public forum," where more regulation is permitted than in a full public forum, the court said that the remaining question was whether the spending limit was "viewpoint neutral and reasonable."

The court said that there was no evidence to suggest that the spending limit was intended to squelch any par-

ticular point of view. As for the test of reasonableness, the court said that it accepted the university's contention that educational issues motivated the spending limit. "Imposing limits on candidate spending requires student candidates to focus on desirable qualities, such as the art of persuasion, public speaking, and answering questions face-to-face with one's potential constituents," the decision said. "Students are forced to campaign personally, wearing out their shoe-leather rather than wearing out a parent's—or an activist organization's—pocketbook."

Bopp, the lawyer for the student who spent more than he was allowed, said that much more is at stake then student government rules. Federal courts, he said, have typically required public colleges to provide wide First Amendment protections in extracurricular activities. "Now the court has said that all activities on campus fall under severely limited First Amendment protections," he said.

Gary Pavela, a fellow of the National Association of College and University Attorneys who writes frequently on legal issues and student affairs, said Bopp was overstating the impact of the decision. Pavela said that the decision would have been much more dramatic if it had gone the other way, because Montana's policies are similar to those at many institutions. And he said that the language in the decision could protect students.

"I think [Bopp is] going too far beyond the facts of this case," Pavela said. "There's no implication in the court's decision that it would generate more authority to govern campus newspapers, for instance—there's nothing to suggest that. And the court is stressing the importance of viewpoint neutrality," Pavela said.

Because the First Amendment applies only to public institutions, the decision should not have a direct impact on private institutions. Appeals court decisions set law in their region and can be cited as precedent elsewhere. The Ninth Circuit includes Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington State. Reported in: insidehighered.com, June 4.

broadcasting

New York, New York

If President Bush and Vice President Cheney can blurt out vulgar language, then the government cannot punish broadcast television stations for broadcasting the same words in similarly fleeting contexts. That, in essence, was the decision June 4 when a federal appeals panel struck down the government policy that allows stations and networks to be fined if they broadcast shows containing obscene language.

Although the case was primarily concerned with what is known as "fleeting expletives," or blurted obscenities, on television, both network executives and top officials at the Federal Communications Commission (FCC) said the opinion could gut the ability of the commission to regulate any speech on television or radio.

Kevin J. Martin, FCC chairman, said that the agency was considering whether to seek an appeal before all the judges of the appeals court or to take the matter directly to the Supreme Court.

The decision, by a divided panel of the United States Court of Appeals for the Second Circuit in New York, was a sharp rebuke for the FCC and for the Bush administration. For the four television networks that filed the lawsuit—Fox, CBS, NBC, and ABC—it was a major victory in a legal and cultural battle that they are waging with the commission and its supporters.

Under President Bush, the FCC has expanded its indecency rules, taking a much harder line on obscenities uttered on broadcast television and radio. While the judges sent the case back to the commission to rewrite its indecency policy, it said that it was "doubtful" that the agency would be able to "adequately respond to the constitutional and statutory challenges raised by the networks."

The networks hailed the decision. "We are very pleased with the court's decision and continue to believe that the government regulation of content serves no purpose other than to chill artistic expression in violation of the First Amendment," said Scott Grogin, a senior vice president at Fox. "Viewers should be allowed to determine for themselves and their families, through the many parental control technologies available, what is appropriate viewing for their home."

Martin, the chairman of the commission, attacked the panel's reasoning. "I completely disagree with the court's ruling and am disappointed for American families," he said. "The court says the commission is 'divorced from reality.' It is the New York court, not the commission, that is divorced from reality."

He said that if the agency was unable to prohibit some vulgarities during prime time, "Hollywood will be able to say anything they want, whenever they want."

Beginning with the FCC's indecency finding in a case against NBC for a vulgarity uttered by the U2 singer Bono during the Golden Globes awards ceremony in 2003, President Bush's Republican and Democratic appointees to the commission have imposed a tougher policy by punishing any station that broadcast a fleeting expletive. That includes vulgar language blurted out on live shows, such as the Golden Globes, or scripted shows, such as *NYPD Blue,* which was cited in the case.

Reversing decades of a more lenient policy, the commission had found that the mere utterance of certain words implied that sexual or excretory acts were carried out and, therefore, violated the indecency rules.

But the judges said vulgar words are just as often used out of frustration or excitement, and not to convey any broader obscene meaning. "In recent times, even the top leaders of our government have used variants of these expletives in a

manner that no reasonable person would believe referenced sexual or excretory organs or activities."

Adopting an argument made by lawyers for NBC, the judges then cited examples in which Bush and Cheney had used the same language that would be penalized under the policy. Bush was caught on videotape last July using a common vulgarity that the commission finds objectionable in a conversation with then-British prime minister Tony Blair. Three years ago, Cheney was widely reported to have muttered an angry, obscene version of "get lost" to Senator Patrick Leahy on the floor of the United States Senate.

"We find that the FCC's new policy regarding 'fleeting expletives' fails to provide a reasoned analysis justifying its departure from the agency's established practice," said the panel.

Although the judges struck down the policy on statutory grounds, they also said there were serious constitutional problems with the commission's attempt to regulate the language of television shows. "We are skeptical that the commission can provide a reasoned explanation for its 'fleeting expletive' regime that would pass constitutional muster," said the panel in an opinion written by Judge Rosemary S. Pooler and joined by Judge Peter W. Hall. "We question whether the FCC's indecency test can survive First Amendment scrutiny."

In his dissent, Judge Pierre N. Leval defended the commission's decision to toughen its indecency policy. "In explanation of this relatively modest change of standard, the commission gave a sensible, although not necessarily compelling, reason," he said. "What we have is at most a difference of opinion between a court and an agency," Judge Leval said. "Because of the deference courts must give to the reasoning of a duly authorized administrative agency in matters within the agency's competence, a court's disagreement with the commission on this question is of no consequence. The commission's position is not irrational; it is not arbitrary and capricious."

The case involved findings that the networks had violated the indecency rules for comments by Cher and Nicole Richie on the Billboard Music Awards, the use of expletives by the character Andy Sipowicz on *NYPD Blue,* and a comment on *The Early Show* by a contestant from CBS's reality show *Survivor*.

The commission did not issue fines in any of the cases because the programs were broadcast before the agency changed its policy. But the networks were concerned about the new interpretation of the rules, particularly since the agency has been issuing a record number of fines.

Two years ago, Congress increased the potential maximum penalty for each indecency infraction to $325,000, from $32,500. Producers and writers have complained that the prospect of stiff fines had begun to chill their creative efforts.

The case, *Fox et al. v. Federal Communications Commission,* along with a second case now before a federal appeals court in Philadelphia involving the malfunctioning wardrobe that exposed one of pop singer Janet Jackson's breasts during the 2004 Super Bowl halftime show, have been closely watched by the television industry and its critics for their broad implications for television programming.

Neither cable TV nor satellite programming faces the same indecency rules even though they cover about 85 percent of homes. And as the Bush administration's appointees have taken a tougher view on indecency, the industry has waged a countercampaign in the courts.

The commission has struggled to consistently explain how it applies the rules. In the Bono case involving the Golden Globe awards, the staff initially ruled in favor of the network. After lawmakers began to complain about that decision, the commission, then led by Michael K. Powell, reversed the staff decision.

But the commission declined to impose a fine because, it noted, "existing precedent would have permitted this broadcast" and, therefore, NBC and its affiliates "necessarily did not have the requisite notice to justify a penalty."

Broadcast television executives have complained about what they say has been the arbitrary application of the rules. They expressed concern, for instance, that they might be penalized for broadcasting *Saving Private Ryan,* a Steven Spielberg movie about the invasion of Normandy during World War II, because of the repeated use of vulgarities.

But the FCC in that case ruled in favor of the networks, finding that deleting the expletives "would have altered the nature of the artistic work and diminished the power, realism, and immediacy of the film experience for viewers." Reported in: *New York Times,* June 5.

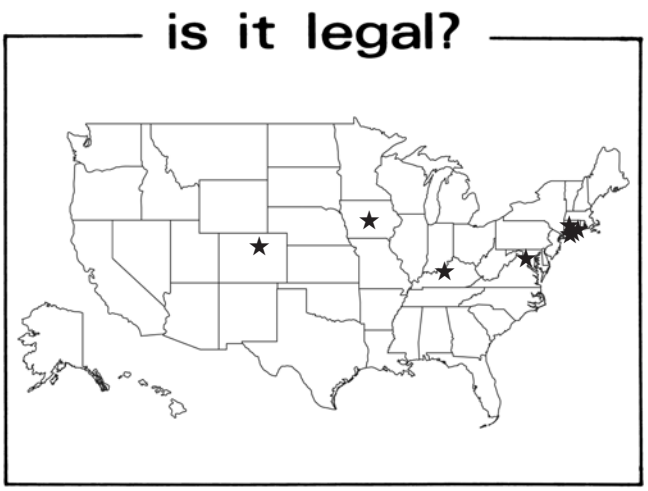
Internet

San Francisco, California

On July 6, the federal appeals court for the Ninth Circuit (California, Oregon, and Washington) ruled that IP address information and the "to" and "from" lines of e-mail are not constitutionally protected. In essence, the court upheld a provision of the Electronic Communications Privacy Act authorizing the government to intercept routing data with a pen register or trap-and-trace device, which are rubber-stamped by courts on a standard far lower than the probable cause standard specified by the Constitution.

At some level, the Ninth Circuit decision made no new law. It accepts the current dichotomy between content and transactional data and applies it somewhat conservatively, in the sense that it approves pen or trap interception only of e-mail to and from information and IP addresses, not the URL that can show a search query or exactly what was read. (It specifically reserved the question whether the Fourth Amendment would protect URL information.)

(continued on page 209)



schools

Burlington, Connecticut

A Lewis S. Mills High School student who was barred from running for class office after she called administrators a derogatory term on an Internet blog is accusing top school officials of violating her free speech rights.

Avery Doninger, a senior at the school in Burlington this fall, was removed as class secretary in the controversy last May. She is asking a state judge to order the school superintendent and the principal to reinstate her as secretary of the Class of 2008 and allow her to run for re-election in September. Lauren Doninger, the sixteen-year-old student's mother, filed the lawsuit July 15 on her daughter's behalf in Superior Court in New Britain.

According to Doninger's lawyer, Jon L. Schoenhorn, the student had a right to express her opinion in a public forum outside of school-sponsored activities. He cited a ruling from the U.S. Court of Appeals for the Second Circuit, which has jurisdiction over federal appeals in Connecticut, New York, and Vermont, that prevented school administrators from punishing students for expression that took place off school grounds.

The Doningers say principal Karissa Niehoff and Region 10 superintendent Paula Schwartz violated Avery Doninger's constitutional right to free speech when the two officials punished her for what she wrote April 24 in a blog entry on her home computer, complaining that a battle of the bands–type jam session at the school had been canceled.

Doninger referred to school administrators as "douchbags" [sic] when she posted the entry on livejournal.com, a virtual community where users can write web logs, diaries, or journals.

Although the Doningers say Avery was wrong to use that word and the girl has apologized for it, they accuse school officials of overreacting. "The school had no business reaching into our home to decide how she should be disciplined," Lauren Doninger, an addiction studies and psychology professor at Gateway Community College in New Haven, said.

Avery Doninger had been elected Class of 2008 secretary in her freshman, sophomore, and junior years. She said she aspires to become a student activities director at a preparatory school or college. The girl, who will be seventeen next month and is working at a Subway sandwich shop this summer, said she works hard at her studies and had no previous problems with school administrators.

On April 24, according to the lawsuit, school officials told Doninger and the other student council officers that a Jamfest scheduled for April 28 could not be held in the school auditorium because there was not a staff member available to run new equipment. The event is an annual battle of the bands organized by the student council in which local musicians perform for the community, according to the complaint.

Another student council member sent an electronic mail message that day to high school parents and students, encouraging them to call the school board for Region 10, which covers Harwinton and Burlington, to express support for Jamfest. Doninger was among four students to sign that message, but it was drafted and sent by another student, according to the lawsuit.

When Doninger encountered Niehoff in the school hallway, the principal scolded her for the message and said the superintendent was angered by it and that Jamfest might be canceled, the lawsuit says. Later that night, about 9:25 P.M., Doninger used her personal computer to post the entry on the blog.

"Jamfest is canceled due to the douchbags [sic] in central office. Here is an e-mail that we sent out to a ton of people and asked them to forward to everyone in their address book to help get support for Jamfest," she wrote. "Basically, because we sent it out, Paula Schwartz is getting a TON of phone calls and e-mails and such. We have so much support and we really appreciate it. However, she got pissed off and decided to just cancel the whole thing all together [sic]."

A few weeks later, on May 17, Doninger went to the school office to accept her nomination for class secretary. Niehoff handed a copy of the blog entry to Doninger and

told her to apologize to Schwartz, tell her mother about the blog entry, resign as class secretary, and withdraw her candidacy, according to the lawsuit.

Avery said she apologized and told her mother, but would not resign or withdraw. Niehoff then dismissed her from the post and barred her from running for the office, according to the lawsuit.

"This is something I felt was really necessary I stand up for," Doninger said.

Jeremy Paul, dean of the University of Connecticut Law School, said the outcomes of recent student free speech cases have varied greatly depending on individual facts. The law, he explained, is still blurry when it comes to the significance, weight, and influence of communications over the Internet, such as content from blogs. At issue, Paul said, is not just the severity of the punishment and whether the consequences were outlined by a particular school policy, but whether Web-based content and opinions generated and distributed off school grounds can merit a punishment by school officials.

"The existence of the Internet basically poses a challenge to the fundamental distinction between on-school property or off-school property," Paul said. While he could not predict the court's verdict, Paul added, "I think all of us who believe in free speech values . . . would have liked to see a slightly more moderate response on the part of the school officials." Reported in: *Hartford Courant,* July 17.

Norwich, Connecticut

A judge has granted a new trial for a former Connecticut substitute teacher convicted of allowing students to view pornography on a classroom computer. Prosecutors did not oppose the defense motion for a new trial for Julie Amero, who had faced up to forty years in prison after her January conviction. The school computer in question was sent to a state laboratory after the trial, and the judge said in his June 6 decision that those findings might contradict evidence presented by the state computer expert.

"The jury may have relied, at least in part, on that faulty information," said Judge Hillary B. Strackbein, who granted the request for a new trial.

Amero has adamantly denied clicking on pornographic Web sites that appeared on her classroom's computer screen in October 2004 while she was teaching seventh graders at Kelly Middle School in Norwich. Some technology experts believe unseen spyware and adware programs might have generated the pop-up ads for pornographic Web sites. Amero and her supporters say the old computer, which she was ordered to leave on, lacked firewall or anti-spyware protections to prevent inappropriate pop-ups.

Several students testified that they saw pictures of naked men and women on the computer screen, including at least one image of a couple having oral sex.

Amero was to have been sentenced June 6, but instead pleaded not guilty to the same charges, four counts of risk of injury to a minor. A date for the new trial had not been set as of press time.

"I had a great team behind me, and I feel comfortable with the decision today," she said after the hearing.

Her attorney, William F. Dow, commended prosecutors, saying they acted responsibly. "The lesson from this is all of us are subject to the whims of these computers," he said after the hearing.

Amero's case has become a cause célèbre among many technology experts, who say what happened to her could happen to anyone. It all began in October 2004. Amero was assigned to a class at Kelly Middle School in Norwich, a city of around 37,000 people about forty miles east of Hartford. Before her class started, Amero says, a teacher allowed her to e-mail her husband. She says she used the computer and went to the bathroom, returning to find the permanent teacher gone and two students viewing a Web site on hair styles.

Amero says she chased the students away and started class. But later, she says, pornographic images started popping up on the computer screen by themselves. She says she tried to click the images off, but they kept returning, and she was under strict orders not to shut the computer off. "I did everything I possibly could to keep them from seeing anything," she said.

Prosecutor David Smith contended at Amero's three-day trial that she actually clicked on graphic Web sites. Computer consultant Herb Horner testified for the defense that the children had gone to an innocent Web site on hair styles and were redirected to another hairstyle site that had pornographic links. "It can happen to anybody," Horner said.

But many were skeptical, including Mark Steinmetz, who served on Amero's jury. "So many kids noticed this going on," Steinmetz said. "It was truly uncalled for. I would not want my child in her classroom. All she had to do was throw a coat over [the computer] or unplug it. We figured even if there were pop-ups, would you sit there?" Reported in: eSchool News Online, June 7.

colleges and universities

Boulder, Colorado

Nearly six years after Ward Churchill compared some American victims of terrorism to Nazi bureaucrats, the Board of Regents of the University of Colorado voted July 24 to fire him. But the controversial ethnic-studies professor said he was "ready to roll" into the next stage of his struggle with the university: a court of law.

According to university administrators, it was findings that Churchill had committed research misconduct—and not the notoriety of Churchill's opinions—that fueled the decision.

In a news release that appeared on the university's Web site just moments after the regents' 8-1 vote, the officials said that Churchill's record "shows a pattern of serious, repeated, and deliberate research misconduct that fell below the minimum standard of professional integrity, involving fabrication, falsification, improper citation, and plagiarism."

"The university's review of Professor Churchill focused on his professional activities, not his statements about victims of September 11, 2001," the statement said.

However, Churchill and his supporters—which include the American Civil Liberties Union and the local chapter of the American Association of University Professors (AAUP)—say that the university's findings of academic misconduct were just a pretext for retaliating against Churchill for his views.

"Once you take away this carefully manufactured illusion of due process," said Churchill, "there's nothing left but the political speech."

Churchill and his lawyer, David Lane, said they would file a lawsuit against the university July 25, asking for damages and reinstatement.

For the Board of Regents, the vote to dismiss the hugely controversial ethnic studies professor was the culmination of a day-long set of deliberations. The deliberations went on an hour-and-a-half longer than expected, adding a last flutter of suspense before yielding an outcome that many saw as inevitable. The regents emerged from their private deliberations at around 5:30 P.M. Colorado time and voted to fire Churchill, but they did not discuss their views and they quickly adjourned. A small group of Churchill supporters in the audience shouted "bullshit" as the board vote was announced.

While the firing was effective immediately, Churchill is entitled under Colorado regulations to receive one year's salary, which for him is just under $100,000.

For the university, the vote represented the end of a two-and-a-half-year series of investigations into Churchill's speech, scholarship, and conduct. Those investigations started because of a public relations crisis. Churchill was propelled into the national spotlight in early 2005, when a campus newspaper at Hamilton College in New York, where he was scheduled to give a speech, reported that he had once referred to the office workers killed in the World Trade Center on September 11, 2001, as "little Eichmanns."

That incendiary remark, which instantly became Churchill's calling card in the press, traveled like wildfire through the conservative blogosphere and traditional media. Before long, Churchill had become nightly fodder for Bill O'Reilly's Fox News talk show. After threats of violence began pouring in to Hamilton College, Churchill's speech there was canceled. When politicians in Churchill's home state of Colorado began calling for his ouster, the interim chancellor of the University of Colorado at Boulder, where Churchill was on the faculty, announced that there would be an investigation into Churchill's work to see whether the professor "may have overstepped his bounds."

That first investigation—carried out by the interim chancellor and two deans—found that Churchill's speech was protected by the First Amendment. However, it also turned up allegations of research misconduct, which set in motion another, more substantial review of the ethnic-studies professor's work.

In May 2006, a special investigative committee composed of three professors from Boulder and two outside professors released a 124-page report that found instances of fabricated evidence, improper citation, and plagiarism in Churchill's scholarship. That report, which was followed by several other steps, paved the way for Hank Brown, the chancellor of the University of Colorado System, to recommend to the Board of Regents in June that Churchill be fired.

"I think it was the depth of the falsification that ultimately led to the outcome," Brown said. "It wasn't just one or two or three or four, but numerous incidents of intentional falsification," such that Brown believed that in the end board members "felt like they didn't have a choice."

Brown, who was present for the board's discussions with Churchill and the faculty panel that reviewed the case, but not for the deliberations, said that board members seemed focused not on the question of Churchill's guilt, but of the punishment. Brown said that the lone regent who voted against firing did so based only on the issue of firing him, not out of any disagreement with the finding that he had committed misconduct.

In its report last May, the special investigative committee said that it was uneasy about the timing of the accusations against Churchill's scholarship, which had been prompted by his sudden public infamy. But the committee reasoned through its uneasiness with a law-enforcement metaphor.

"To use an analogy," the committee wrote, "a motorist who is stopped and ticketed for speeding because the police officer was offended by the contents of her bumper sticker, and who otherwise would have been sent away with a warning, is still guilty of speeding, even if the officer's motive for punishing the speeder was the offense taken to the speeder's exercise of her right to free speech. "No court would consider the improper motive of the police officer to constitute a defense to speeding, however protected by legal free speech guarantees the contents of the bumper sticker might be."

In the weeks and months leading up to the Board of Regents' vote, several supporters of Churchill turned their own scrutiny on the investigative committee's report.

Eric Cheyfitz, a professor of American studies at Cornell University, was among a handful of professors supporting Churchill who drafted a response to the report, accusing the committee itself of research misconduct. The group criticized the committee for not including experts in Churchill's field. Cheyfitz said that the committee relied too much, in its

assessments of Churchill's research, on the work of scholars who have had long-standing feuds with Churchill.

The report focused on Churchill's accounts of several events in the history of United States relations with Native Americans. According to Cheyfitz, those events are shrouded in controversy within the discipline of Native American studies. "What they've done," Cheyfitz said of the committee, "is turn an academic debate into an indictment of one side of that debate."

A large (6'5"), brash, and iconoclastic figure, Churchill is hardly a natural poster child. Yet he has come to symbolize a bizarre array of modern causes, vices, and perils. He has been called a "poster boy for lefty nihilism," "extremists in academe," "academic malfeasance," and academic freedom, to name just a few.

For many conservatives, Churchill has become a symbol of the political biases allegedly rife in higher education. His views, however unpalatable to the mainstream, have been described as dangerously typical of the professoriate. "How Many Ward Churchills?," a study published by the American Council of Trustees and Alumni, purported to show that "Ward Churchill is everywhere" in academe.

Meanwhile, Churchill's supporters see him as another kind of poster child. Margaret LeCompte, the president of Churchill's local AAUP chapter, has called the scrutiny of Churchill "a test case by the U.S. right wing to emasculate faculty rights in U.S. universities," an effort, she said, that has been spearheaded by the American Council of Trustees and Alumni (ACTA).

Anne D. Neal, ACTA president and author of the "How Many Ward Churchills?" study, said that free speech and even political bias were irrelevant to the board's decision. "It's not about politics," she said. "It's not about First Amendment rights. This is about scholarly standards and the need for the public trust to be maintained." The decision, she said, "sends a very positive message that higher education is cleaning up its own."

Greg Lukianoff, the president of the Foundation for Individual Rights in Education, said that Churchill's legal case against the university may hold water, if only because of timing. "Given that this [investigation] was initially launched because of his public opinions, he's going to have an argument that this was all pretextual," said Lukianoff. Lukianoff added that the university had placed itself in an awkward position "by launching the investigation initially because people were angry about what he had said, not because of these pre-existing claims of academic misconduct."

Peter N. Kirstein, a professor of history at Saint Xavier University and a blogger who writes frequently about academic freedom, said he was dismayed by the vote, which he called "an egregious violation of academic freedom" that "may transform higher education into a stultifying pall of conformity." Kirstein said that the bottom line is that Churchill's "dismissal would not have happened had there not been negative reaction to his writings on the causes and meaning of the September 11 attacks. That point is irrefutable. This situation would never have occurred had he not defied conventional wisdom in his depiction of American casualties in a negative manner. That was his right and our duty to defend it."

Writing on the Free Exchange on Campus blog before the vote to fire Churchill, Aaron Barlow noted that it was time to look at the case beyond Churchill himself and raised possible criticisms both of Churchill's adversaries and defenders. "If nothing else, the Churchill case points out the fact that we need to seriously consider the question of whether we academics are doing enough to police ourselves. The next time those attacking academia come up with a particular person to attack, will we be confident that our defense of that person will not open us up to further accusations of protecting the unqualified or dishonest?" asked Barlow, who teaches English at the New York City College of Technology.

"Should the fact of a witch-hunt be enough to bring academia to the defense of one of its own? The knee-jerk answer is 'Yes.' But what if it turns out that the person in question (the details of the Churchill case aside) really wasn't qualified for the position, by background or by scholarship? What if it turns out that there certainly was dishonesty going on? Should the defense be continued?" Barlow wrote. "The results of the Churchill case will not answer these questions. But, as we move forward with or without Churchill in our midst, everyone concerned with academic freedom needs to consider how best to react next time. The argument, in other words, will not be over on Tuesday [July 24]."

Churchill and his lawyer said they were not surprised by the regents' vote. They said they had already written out their lawsuit against the university, in preparation for it to be filed the next day. Reported in: Chronicle of Higher Education online, July 25; insidehighered.com, July 25.

Ames, Iowa

The pregame moment of silence and postgame prayer circle are familiar traditions to many college athletes. Coaches pointing to the heavens after a victory; players crediting a higher being for their performances—those sights and sound bites have become cliché. Faith and sports have a long history of intersecting, and every so often a case arises that revives the discussion of where to draw the line at public institutions.

Iowa State University is currently embroiled in just such a controversy over whether its football team—at the request of its head coach—should be allowed a spiritual adviser. Some faculty members are upset at the idea, and more than 130 have signed a petition saying that such a position creates a serious violation of the separation between religion and government.

A panel that advises the university on athletics issues has voted, 7-1, in favor of the proposal. That recommendation now goes to Gregory Geoffroy, the university's president, for consideration.

According to the job description, the "life skills assistant" would likely report to the athletics director. The person would serve those who seek counsel on "a variety of practical, moral, spiritual and personal issues," and would not "pressure, coerce or proselytize team members." The adviser would have access to practices, games, and other events, but any prayer led during mandatory team functions would have to be initiated and led by team members.

Iowa State says the adviser would not be supported by any state, university, athletic, or foundation funds, but rather from donations made by private individuals.

Still, some faculty members remain upset. Hector Avalos, a professor of religious studies and co-author of the petition, said the title of "life skills assistant" isn't fooling the faculty. He said it doesn't matter who funds the position or whether it's a volunteer position or not.

"It's a clear effort to Christianize the athletics department," he said. "There's a determination to prefer one religious group over another in hiring a chaplain. Once you start applying religious counseling, you can't use a multi-faith approach."

In an e-mail response to the petition, Jamie Pollard, athletics director at Iowa State, defended the position. "Much like we have offered our student-athletes access to drug and alcohol counselors, sports psychologists, nutritionists, hypnotists, physical therapists, learning specialists, chiropractors, physicians, etc., we are now going to also provide access to a spiritual advisor."

Avalos said that as college teams become more diverse, the issue of bringing religion into the mix at public institutions will become all the more problematic. Added Peter Roby, director of the Center for the Study of Sport in Society at Northeastern University, where he was just named athletics director: "In my opinion, it is a dangerous precedent because it can lead to some athletes feeling isolated and discriminated against. . . . I would let the athletes know what religious and spiritual resources are available on campus or in the community and let them access them as they see fit."

At New Mexico State University, a confidential settlement was reached in a case involving former football players who claimed they were discriminated against because they are Muslims. The suit alleged the players were dismissed because of their religious beliefs, and that while on the team they were asked to recite the Lord's Prayer during team functions. The settlement stipulated that the university denies wrongdoing or bias. As a result of the suit, the prayer has been replaced by a moment of silence.

But coaches often say that prayers are directed at the safety of the players, and are not religiously based. Reports have documented coaches at some universities taking athletes to churches before the football season in an effort to build team unity. The coaches say the trips are never mandatory, and that they cannot remember players complaining.

Pollard, in the letter to Iowa State faculty, indicated that for more than a decade, a local pastor has traveled with its football team and attended home games as his schedule permitted.

Avalos said the "business-as-usual" defense doesn't fly. "At a public institution, it's always a Constitutionally risky thing to do." Reported in: insidehighered.com, June 28.

Louisville, Kentucky

Should the National Collegiate Athletic Association (NCAA) be able to demand that someone leave an athletic event at a public university for blogging during a game?

NCAA thinks it can—and that it can use universities as its enforcers. On June 8, the association did just that when the University of Louisville, acting on NCAA orders, evicted a credentialed reporter for *The Louisville Courier-Journal* from a baseball playoff game for doing his job. According to the NCAA, it would be fine for the reporter to write online about the atmosphere of a game, the mood of the fans, even the quality of the hot dogs in the stands. But mention that someone just hit a home run—information the NCAA wants to preserve for those that pay to broadcast games—and the reporter is outta there.

The newspaper and its lawyer are furious. The paper says the ejection raises questions of whether the NCAA and universities are violating First Amendment rights and whether the association is trying to rewrite the law to maximize its television profits.

"Once someone hits a home run, that is a public fact and you can't copyright a public fact," said Jon L. Fleischaker, the newspaper's lawyer. By saying that the newspaper could blog during a game that the fans are going wild, but not why they are going wild, NCAA and the university are "in the situation of making a decision about content" that a newspaper may or may not print, and that "raises First Amendment issues," he said.

The newspaper is "looking at all of our options" right now, he said, declining to elaborate on whether it would go to court.

Asked if public universities should be in the business of stopping newspapers from reporting events and disseminating information, Fleischaker said that "universities are becoming more and more like purely private economic institutions, especially when it comes to sports." While Louisville enforced NCAA's orders, he said, the problem here is the association, not the university. "It's the NCAA. It's an effort to try to get as much money as the NCAA can."

That's because NCAA promises exclusive broadcast rights to networks for various events. The baseball playoff in question was on ESPN. Fleischaker noted, however, that the newspaper wasn't trying to do play by play, just to provide updates, including such relevant information

as the score and key events such as home runs. Further, he noted that NCAA is trying to set a standard that would have it policing all kinds of citizens exercising their rights. He asked if NCAA would try to block someone watching a game on television from blogging about it (and perhaps mentioning the score), or whether NCAA would try to block a fan from sending a message during a game. "What about the fan with the Blackberry?" he asked.

The University of Louisville indicated that NCAA had informed it that it needed to enforce the rule against blogging that included information on what was happening during the game. While university officials declined to answer specific questions about why a public university would evict a reporter from an event on campus for reporting on that event, Louisville issued a statement saying: "As an NCAA institution, we must abide by all NCAA rules, including those in hosting NCAA events. Our staff sought an amicable solution to this situation from many angles. It's unfortunate that it led to the actions that were taken."

An NCAA spokesman said the following via e-mail: "Reporters covering our championships may blog about the atmosphere, crowd and other details during a game but may not mention anything about game action. Any reference to game action in a blog or other type of coverage could result in revocation of credentials. This pertains to all NCAA championships. Live coverage is considered a protected right that has been granted to CBS as part of a bundled rights agreement. As part of that agreement, ESPN has shared exclusivity on Internet rights for the 22 championships it broadcasts."

The material that resulted in the ejection of Brian Bennett, the reporter, is online at the Louisville paper's Web site, along with his description of what happened. "It will be interesting to see if NCAA can enforce such a policy," Bennett wrote. "What strikes me as really strange is that someone watching ESPN across the street could have blogged every single pitch without a problem. Also, I seriously doubt anyone was reading my blog instead of watching ESPN. I believe my blog served those readers who for some reason or another couldn't be at the game or get access to a TV (I know this because quite a few emailed me to say just that, and to thank me for my efforts). We got more than 10,000 hits on my blog from the Columbia Regional final last Monday. And college baseball, especially in this area, could use all the publicity it can get."

Bennett, whose game reports leave no doubt about his enthusiasm for the game, adds: "I hate that this in some small way detracted from what was an otherwise truly remarkable day for U of L baseball."

publishing

New York, New York

Cambridge University Press announced in late July that it would pulp all unsold copies of the 2006 book *Alms for Jihad: Charity and Terrorism in the Islamic World* in response to a libel claim filed in England by Khalid bin Mahfouz, a Saudi banker. The book suggests that businesses and charities associated with Mahfouz financed terrorism in Sudan and elsewhere during the 1990s.

"Cambridge University Press now accepts that the entire bin Mahfouz family categorically and unreservedly condemns terrorism in all its manifestations," a lawyer for Mahfouz declared July 30 in a London courtroom. During the court hearing, the publisher also promised to contact university libraries worldwide and ask them to remove the book from their shelves. It also agreed to pay "substantial damages" to Mahfouz.

The book's authors—Robert O. Collins, a professor emeritus of history at the University of California at Santa Barbara, and J. Millard Burr, a retired employee of the U.S. State Department—were not personally named in the libel action, and they refused to endorse the settlement.

This was at least the fourth book against which Mahfouz has successfully pursued a libel action. His Web site also lists settlements involving *Reaping the Whirlwind: The Taliban Movement in Afghanistan* (Pluto Press, 2001) by Michael Griffin, a freelance writer; *Forbidden Truth: U.S.-Taliban Secret Oil Diplomacy and the Failed Hunt for Bin Laden* (Thunder's Mouth Press, 2002) by the French writers Jean-Charles Brisard and Guillaume Dasquié; and *Funding Evil: How Terrorism Is Financed—and How to Stop It* (Bonus Books, 2003) by Rachel Ehrenfeld, director of the American Center for Democracy, a nonprofit organization in New York.

Ehrenfeld characterized as "despicable" Cambridge's decision to settle this week, a move the press has defended as necessary and just. Ehrenfeld, who is a friend of Burr's, said that, as she understands it, press officials "caved immediately."

"They didn't even consider the evidence that the authors had given them," she said. "They received a threatening letter, and they immediately caved in and said, 'Do whatever it takes. Pay them whatever they want. Ban the book, destroy the book, we don't want this lawsuit.'"

Deborah E. Lipstadt, a professor of religion at Emory University who has her own experience with libel lawsuits, sounded a similar note on her blog last week. Decrying Cambridge's decision to settle the *Alms for Jihad* case, she warned of a "pattern of silencing by the Saudis of authors who are critical of them."

But a representative of Cambridge insisted that the press had acted properly. "These were very serious charges, and any responsible publisher would have stopped selling the book immediately, as we did," Kevin Taylor, the press's intellectual property director, said. "There had already been at least two High Court rulings upholding Mr. Mahfouz's position in these matters," Taylor said. "When we looked hard into it, and we studied the tangled history of these claims, we quickly realized that our position was completely indefensible."

Taylor estimated that 1,500 copies of *Alms for Jihad* had been sold worldwide. He said he could recall, in his twenty-three years at the press, only one previous incident in which the press had asked libraries to remove a book from their shelves.

Mahfouz is a son of Salem bin Mahfouz, a Yemeni-born businessman who built an extremely prosperous banking business in Saudi Arabia in the mid-twentieth century. In the passages of *Alms for Jihad* that deal with Mahfouz's alleged ties to terrorist financing, Burr and Collins generally cite news-media reports from the BBC, *The Wall Street Journal, The Boston Herald,* and an African publication known as *Africa Confidential*. The authors do not directly cite any government documents or reports, or any firsthand knowledge of Mahfouz's activities. Mahfouz's Web site broadly asserts that no U.S. government agency has ever designated his businesses or foundations as conduits for terrorist financing.

Burr and Collins might someday have a new legal weapon to use in their defense. Ehrenfeld has sued Mahfouz in the United States, seeking to establish that the libel judgment he won against her in England has no force of law in other countries. Her book was never published in England, but Mahfouz successfully brought suit there on the premise that residents of England could order the book from online booksellers in the United States. Libel law is much more favorable to plaintiffs in Britain than in the United States. Ehrenfeld would also like to try to establish on the record that her allegations about Mahfouz's conduct are true.

A New York court dismissed Ehrenfeld's suit last year, but in June a federal appeals court issued a ruling that asked the New York court to reconsider its dismissal. Reported in: Chronicle of Higher Education online, August 1.

church and state

Washington, D.C.

For the first time in its history, the U.S. Senate on July 12 opened a session with a prayer by a Hindu. Protesters interrupted the proceedings on two separate occasions and were arrested.

Senate Majority Leader Harry Reid (D-NV) invited Rajan Zed from the Hindu Temple of Northern Nevada in Reno. Before Zed could begin speaking, protesters attempted to drown out his speech. Sen. Bob Casey Jr. (D-PA), who presided over the Senate at the time, had to ask the Sergeant at Arms to restore order before Zed could commence, and once again during his speech after another protester shouted, citing the Ten Commandments, "You shall have no other gods before you." The guest chaplain appeared rattled by the cries, but remained composed and continued his prayer.

Zed chanted from Sanskrit holy texts, including portions of the Vedas, Upanishads, and the Bhagavad Gita. He prayed, additionally, for the senators to serve wisely and selflessly. Zed concluded with a prayer to comfort the family of former first lady Lady Bird Johnson, who died the previous day.

The opening prayer is normally given by the Senate chaplain, Barry C. Black, a Seventh-Day Adventist, but senators are permitted to invite guest chaplains from their home state.

The Senate Chaplain's office confirmed that Zed was the first Hindu in history to lead the Senate's opening prayer. In 2000, Venkatachalpathi Samuldrala performed the first Hindu opening prayers for the House of Representatives.

All sessions of the Senate have opened with a prayer since the chamber's first meeting in New York City in April 1789. Sixty-two Senate chaplains have been elected since then—sixty-one have been from various denominations of Protestantism; the sole Roman Catholic served from 1832–1833. Reported in: *The Hill,* July 12.

Oyster Bay, New York

Jews for Jesus has filed a federal court action against Oyster Bay, New York, claiming a section of the town code is unconstitutional because it prevented the group's members from freely distributing leaflets in a public park.

In *Jews for Jesus v. Town of Oyster Bay,* filed in the Eastern District of New York, Jews for Jesus and one of its employees, Susan Mendelson, argue in a twenty-five-page complaint that §168-16 of the town code violates the First Amendment because it creates an unconstitutional prior restraint on protected speech.

According to the suit, "[p]laintiffs are uncertain whether they will be arrested in the future when the Town enforces the ban on literature distribution in the public parks of Oyster Bay."

The action requests an injunction to bar enforcement of §168-16 and a declaration that the provision violates the federal and state constitutions. It seeks nominal, punitive, and special damages to be determined at trial.

In addition to the town, Jews for Jesus also named the town board; John Venditto, town supervisor; George Baptista, deputy commissioner of the parks department; and William McHale, deputy chief of patrol for the Nassau County Police Department, as parties in the suit.

"If we don't stand up for our rights we will lose them. This is one town and we don't want others to follow this example," said Susan Pearlman, associate executive director of Jews for Jesus. Pearlman said her members plan to distribute free literature and converse with people in the town's parks at summer concerts.

Meanwhile, a new permit process was instituted shortly after the suit was filed. Venditto said the town has "no problem" with Jews for Jesus setting up a table from which its members can give out information. "This is a situation we want to resolve," Venditto said.

Pearlman said the organization's attorneys have begun to examine the town's new permit application process. "At first blush, it seems to be quite restrictive and chilling and does not provide us with our constitutional rights," she said. She added that the Jews for Jesus would move forward with its lawsuit against the town. "This in no way makes us stop our suit," she said.

The section of the code at issue, titled "public addresses, entertainments or parades" requires "special permission of the Town Board" for a wide range of activities in municipal parks, including the making of "a speech, address or harangue" and the distribution of any "sign, notice, declaration or appeal of any kind or description."

The issue came to light on July 25, 2006, when Mendelson, along with two other Jews for Jesus members, went to the park to distribute religious literature and to speak with people about their beliefs. The group was met by the town's commissioner of public safety, who told them they could not engage in these activities, and police later escorted the volunteers outside the park.

Frederick H. Nelson, an attorney for Jews for Jesus, on that same day contacted the town attorney and county police officials about securing a permit to distribute information in the town. Nelson said he was informed by a deputy police chief that no person was allowed to distribute literature in any public parks. The police added that Jews for Jesus members would be allowed to enter the park to speak to people, but police would remove them if anyone was offended by the discussion.

Mendelson said she called the town on July 27, 2006, and George Baptista, deputy commissioner of parks, but he told her there was no parks department permit process in place for the distribution of religious tracts and speaking at town parks. He said she would have to apply to the town board or town clerk.

Mendelson returned to the park on August 1, 2006. While attempting to distribute literature she was escorted from the park and charged with violating the town code.

In April, Nassau County District Court Judge Sondra K. Pardes dismissed the citation against Mendelson and concluded the provision of the town code violated the U.S. Constitution on its face and as it was applied. "The clear language of the ordinance in question reveals that it imposes an absolute bar to various forms of speech and that it does not contain the reasonable time, place and manner restrictions which our courts require to provide safeguards for First Amendment liberties," Judge Pardes wrote.

Jews for Jesus filed its lawsuit on June 22. It argues the park is a traditional public forum and the code "gives the Town Board unbridled discretion to decide whether, when and how to allow First Amendment activities in Town parks."

Effective July 3, the town adopted new regulations establishing procedures for use of park facilities. Those regulations require a permit before "the distribution of printed or similarly expressive material." However, they state that permits will be issued without regard to content and will not be denied unless more people apply than can be reasonably accommodated in a particular area. They also provide that an organization may be denied a permit if it has violated the conditions of a permit within the previous two years.

The regulations limit to four at any given time the number of people distributing literature. In order to limit littering and to "minimize unwanted intrusion on other park users' quiet enjoyment," they mandate that distribution may occur "only upon an indication of interest by the recipient, and only from a stationary table in a fixed location fixed in the permit." Reported in: *New York Law Journal,* July 11.

national security letters

Washington, D.C.

An internal FBI audit has found that the bureau potentially violated the law or agency rules more than one thousand times while collecting data about domestic phone calls, e-mails, and financial transactions in recent years, far more than was documented in a Justice Department report in March that ignited bipartisan congressional criticism.

The new audit covers just 10 percent of the bureau's national security investigations since 2002, and so the mistakes in the FBI's domestic surveillance efforts probably number several thousand, bureau officials said in interviews. The earlier report found twenty-two violations in a much smaller sampling.

The vast majority of the new violations were instances in which telephone companies and Internet providers gave agents phone and e-mail records the agents did not request and were not authorized to collect. The agents retained the information anyway in their files, which mostly concerned suspected terrorist or espionage activities.

But two dozen of the newly discovered violations involved agents' requests for information that U.S. law did not allow them to have. Only two such examples were identified earlier in the smaller sample.

FBI officials said the results confirmed what agency supervisors and outside critics feared, namely that many agents did not understand or follow the required legal procedures and paperwork requirements when collecting personal information with one of the most sensitive and powerful intelligence-gathering tools of the post-September 11 era—the National Security Letter (NSL).

Such letters are uniformly secret and amount to non-negotiable demands for personal information—demands that are not reviewed in advance by a judge. After the 2001 terrorist attacks, Congress substantially eased the rules for issuing NSLs, requiring only that the bureau certify that the records are "sought for" or "relevant to" an investigation

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success stories

libraries

West Palm Beach, Florida

Parent Laura Lopez thinks that books on homosexuality, abortion, and atheism have no place in school libraries. The Palm Beach County School Board says the selections will stay on the shelves.

The seven-member board rejected Lopez's library book challenge July 11, following a rare hearing.

"This is a slippery slope," School Board Chairman Bill Graham said. "If you take one book off a shelf, there's no end to it."

Lopez had appealed rejections this year by superintendent Art Johnson and committees at Royal Palm Beach High and Alexander W. Dreyfoos, Jr., School of the Arts in West Palm Beach. "This stuff is inappropriate to be in the schools," Lopez told the board. "It's a sin; it's wrong."

Lopez brought forward the appeal on her own behalf. She said she's been a member of Christ Fellowship Church for seven years, listing the church on her requests to remove the books. But the church, which has three campuses in Palm Beach County, notified the board's lawyer that it did not support Lopez. "It's an individual on a crusade," said church spokesman Mike Anthony. "She does not represent Christ Fellowship."

Lopez said she'll return with a petition with thousands of names of people who share her opinion. She also plans to explore legal action.

Board member Bob Kanjian said he was happy to see Lopez get a chance to air her views publicly, but he said he completely supported Johnson's recommendation.

Under board procedures, any citizen can request schools to reconsider materials in their libraries. Usually the requests are resolved by the schools, and the matters never come before the school board. The committees that reviewed Lopez's request stated that school libraries should hold titles that cover "all points of view on current and historical issues." Reported in: *South Florida Sun-Sentinel,* July 12.

Independence, Missouri

A book in the William Chrisman High School library that one parent wanted removed will remain on the shelf. The Independence Board of Education approved the recommendation from the Challenged Curriculum Committee on July 10 to leave the book in the William Chrisman library with no restrictions.

The book, *The Brimstone Journals* by Ron Koertge, is a collection of fifteen journal entries from fictitious high school students telling their stories. The entries chronicle the day-to-day lives of these students all leading up to an attack on the high school planned by one of the students. In the end, two students stop the attack by contacting law enforcement officials.

"This parent was concerned about the profanity (in a few entries) as well as some of the subjects discussed in the book," said deputy superintendent Henry Russell.

The book has only been checked out from the library twice in the last three years, and although some of the committee members were uncomfortable with the subject matter, Russell said members were hesitant to ban the book.

"The committee felt that if we start banning books, where do we draw the line," he said. "The book does resolve itself in a positive manner, and it isn't popular among the students. The committee felt it was best to leave it alone." Reported in: *Independence Examiner,* July 11.

schools

Lawrenceville, Georgia

After losing her latest battle to keep Harry Potter books out of the classroom, a Loganville mother said she was not surprised by Superior Court Judge Ronnie Batchelor's May 29 decision to uphold the Gwinnett County Board of Education's ruling retaining the books. "I've done the best I can by myself," said Laura Mallory, who has challenged the use of the books in schools since 2005 and argued her case without an attorney. "Perhaps we need a whole new case built from the ground up."

Although Mallory was not allowed to present new evidence, she argued for about an hour that the Harry Potter

books promote witchcraft and contain violent material not suitable for young children. "This is not just fiction or fantasy in the books," Mallory said. "Witchcraft is real. It's been around for thousands of years, and we were warned of it from God."

Mallory began to cry as she read testimony that had been presented in April 2006 by a then-fifteen-year-old girl who said the Harry Potter books caused her to become fascinated with witchcraft and experiment with tarot cards, curses, and seances. "Your honor, we need God back in our schools," Mallory said, with tears in her eyes, in the middle of reading the testimony

As she continued her argument, Mallory said she feels there is a bias in schools against Judeo-Christian values. It's not fair, she said, that the Bible isn't used as a textbook while teachers are reading the Harry Potter series to students and classes are taking field trips to see the movies based on the bestselling series.

"We don't want our children to be murderers, but we can't teach that in our schools anymore," Mallory said. "'Thou shalt not kill' is out." After violent events such as school shootings, Mallory said people often ask where God is. "God is still here, but he was kicked out of schools," Mallory said. "I have a dream that God will be welcome back in schools again. I think we need him."

School board attorney Victoria Sweeny argued that Mallory, rather than submitting evidence in previous hearings, presented hearsay found on the Internet and presented excerpts from the novels without providing context. "I'm not here to defend Harry Potter," Sweeny said. "I'm here to defend the right of the Gwinnett County Board of Education to make lawful decisions."

The school board, Sweeny said, presented plenty of evidence that the books contain themes of the triumphs of good over evil and encourage children to read. Furthermore, Sweeny said Mallory's argument that the books violate the constitutional separation of church and state is incorrect, and that the issue is actually centered on the First Amendment clause that guarantees the freedom of expression.

Sweeny asked the judge to keep in mind Thomas Jefferson's statement that freedom of speech cannot be limited without being lost.

Sloan Roach, spokeswoman for Gwinnett County Public Schools, said the district was pleased with the court's findings. "The issue of removing a book from a school library is a serious issue," Roach said. It would contradict case law to remove a book because someone doesn't like the ideas expressed within the pages, Roach said.

Mallory has tried to ban the books from county school library shelves since August 2005, arguing that the popular fiction series is an attempt to indoctrinate children in witchcraft. School board members have said the books are good tools to encourage children to read and to spark creativity and imagination. In May 2006 the county denied Mallory's request. In December, the state Board of Education upheld the county's decision. Reported in: *Gwinnett Daily Post,* May 30.

student press

Springfield, Illinois

The Illinois legislature approved a bill in June that would bolster the First Amendment rights of students working for college newspapers. If it is signed into law by the state's governor, Rod R. Blagojevich, a Democrat, Illinois will become the only state besides California to provide special legislative safeguards to college newspapers. A similar law was adopted in Oregon in July (see below). Legislators in Washington State proposed a measure that would accomplish many of the same ends, but the measure stalled in the State Senate.

Student-press advocates say it used to be a foregone conclusion that student journalists enjoyed the same First Amendment protections as other reporters. But that assumption has been challenged since a 2005 ruling by the U.S. Court of Appeals for the Seventh Circuit in *Hosty v. Carter,* a case involving three student reporters at Governors State University who sued the institution for violating their free speech rights. The circuit court decision reaffirmed a lower court's ruling that extended to college administrators the same rights to censor student newspapers that high school administrators have.

Lawyers for the students appealed the decision to the U.S. Supreme Court, but the court declined to hear the case. The Illinois attorney general, representing Governors State in a brief to the Supreme Court, called concern over a potential onslaught of restrictions "premature at best, and illogical at worst."

Technically, the seventh circuit's ruling applies only to the three states in the circuit—Illinois, Indiana, and Wisconsin—but the decision has had a much wider effect. Christine Helwick, general counsel for the California State University system, sent a memorandum to presidents of the system's campuses the week after the decision was released. The memo said that "CSU campuses may have more latitude than previously believed to censor the content of subsidized student newspapers."

The California law providing more protection to student newspapers, which Governor Arnold Schwarzenegger, a Republican, signed last August, was a response to that memo and to related fears by advocacy groups that college administrators would wield too much control over student newspapers.

According to Mike Hiestand, an attorney and legal consultant for the Student Press Law Center, the seventh circuit ruling also emboldened administrators at Grambling State University in Louisiana, who shut down the institution's student newspaper this past winter. The proposed law in Illinois would protect colleges and universities there from similar actions.

"It's kind of amazing, to me at least, that we're at the point where we have to look to state lawmakers for protection," said Hiestand. "But this is certainly a step in the right direction, and we are delighted." Reported in: Chronicle of Higher Education online, June 11.

Springfield, Oregon

Oregon college and high school journalists will be protected from administrative censorship under a bill that Gov. Ted Kulongoski signed July 13. The law is the country's first in more than a decade to protect high school journalists, and the first ever to cover both high school and college journalists under one statute.

Warren Watson, director of J-Ideas, a First Amendment institute at Ball State University in Muncie, Indiana, called it "a landmark for student journalism."

Only six other states protect high school journalists.

In 2005, a federal appeals court ruled in an Illinois case that college administrators could censor a student newspaper that was not a designated public forum for student expression. In that case, a dean at Governors State University had barred stories critical of the administration from the student paper. The ruling only applies to three midwestern states, but school administrators elsewhere have cited it in controlling college and high school student publications.

California started the trend last year, passing a law protecting college students from censorship. A similar proposal in Washington died in the legislature this year. Michigan lawmakers are considering similar legislation.

Student press groups in Minnesota, New Jersey, Vermont, Indiana, and Louisiana are pursuing similar laws.

Rep. Larry Galizio (D-Tigard) introduced Oregon's bill. Galizio, who also teaches college journalism, said he read about Washington's attempt and modeled Oregon's bill after it. "It was amazing to me how quickly word of the bill spread to journalism students and teachers," Galizio said.

Journalism and education associations across the state backed the bill, said Frank Ragulsky, executive director of the Northwest Scholastic Press Association and student media director at Oregon State University.

Lauren Dillard, editor of Oregon State University's *Daily Barometer,* told lawmakers that students can't learn how to hold governments accountable if they can't question their own governing body. "It's difficult to serve as that fourth estate if you don't have independence from your organization," Dillard said.

J-Ideas, which is largely funded by the Knight Foundation, also helped lobby for the bill and is working on similar efforts in other states.

Opponents argue that students aren't capable of responsibly editing a newspaper, and that even professional journalists can be controlled by publishers and owners.

The Oregon bill says student journalists are responsible for determining the content of school-sponsored media, and gives them the right to sue schools that violate free press rights. But amendments removed a provision that student media advisers who refuse to censor student publications cannot be fired or transferred. An amendment also eliminated a provision that designated college publications as public forums.

But advocates still claimed victory. "At a time when so much student expression is being diminished, it is heartening to know that Oregon, consistent with its rich free speech tradition, is at least doing something to stem the tide of censorship of student expression," said Ronald Collins, a scholar for the Nashville-based First Amendment Center. Reported in: Associated Press, July 13.

art

New York, New York

New York City has backed down from a court battle that would have tested its authority to block offensive artwork from being displayed on public property. In apologizing June 6 for shuttering a sexually explicit art show that was briefly on display in a Brooklyn war memorial last year, mayor Michael Bloomberg's administration pursued a more conciliatory path when accused of censorship than had the previous administration. Mayor Giuliani was rebuked in federal court after trying to prevent taxpayer funds from subsidizing the Brooklyn Museum of Art's display of the Virgin Mary on a canvas decorated with elephant dung and images of women's crotches.

The city avoided risking a similar chastisement from a federal judge by promising to pay $750 to each of the eighteen art students and a professor who had participated in an exhibit the city closed last year at the Brooklyn War Memorial at Cadman Plaza. The payments and an apology settled a First Amendment lawsuit brought by the students, charging city officials with censorship.

The exhibit, put on by master's degree candidates at Brooklyn College, included a sculpture of a penis and a separate piece containing a written narrative describing a sexual encounter with a man named Dick Cheney. One day after the display opened in May 2006, the Brooklyn parks commissioner, Julius Spiegel, locked the doors to the War Memorial, which Brooklyn College students had used as an exhibit space. College officials subsequently removed the artwork, damaging several of the pieces.

At the time, a parks department spokesman said the decision to shut the exhibit was made because the art was not "appropriate for families."

In a statement filed at U.S. District Court in Brooklyn, Spiegel wrote that his decision to shut the doors had set "in motion actions that led to the damage of Plaintiff's artwork, which a reviewing court might find constituted a violation of the student-exhibitors' First Amendment rights."

"Whatever the outcome in court might have been, I apologize to the Brooklyn College art students," he said.

Mayor Giuliani's loss in court nearly eight years ago likely influenced the city officials, who decided to settle the lawsuit by the students. "I suppose the Brooklyn museum case suggested that if they hadn't settled, they would indeed have lost," a law professor at New York University, Amy Adler, said.

Adler, whose area of expertise is art law and censorship, noted that several questions of law remained unanswered concerning what limits, if any, the city can place on the content of an exhibition. For instance, Adler said there was no decisive court precedent that said whether the city could have a blanket policy stating "we are only going to display work that is non-sexual."

The city has no policy for examining the content of artwork before it issues permits for city spaces.

When the Parks Department granted the permit for last year's exhibit, the city was not familiar with any of the individual pieces, a lawyer for the plaintiffs, Norman Siegel, said.

Marni Kotak, an artist whose work was included in the exhibit, said, "This will never happen to any other art students in the city—that is all we can hope for."

Siegel said the letter of apology from Spiegel could "create a government consciousness not to do this again. I believe the lesson is that the government is not the appropriate body to judge the value of art," Siegel said.

The city will also pay $42,500 in legal fees to Siegel and his co-counsels to the case, driving the total price of the settlement for the city up to $56,750.

A spokesman for Brooklyn College, which was originally named in the lawsuit and later dropped from it, declined to comment. After removing the artwork from the War Memorial, Brooklyn College kept the pieces locked up for more than a week, one of the artists, Zoe Cohen, said. Eventually, the college helped organize a second exhibit for the works. "I've forgiven them," the artist who created the sculpture of the penis, Augusto Marin, said of those who removed the artwork. Reported in: *New York Sun,* June 7. □

(Is It Legal? . . . from page 204)

"to protect against international terrorism or clandestine intelligence activities."

The change—combined with national anxiety about another domestic terrorist event—led to an explosive growth in the use of the letters. More than 19,000 such letters were issued in 2005 seeking 47,000 pieces of information, mostly from telecommunications companies. But with this growth came abuse of the newly relaxed rules, a circumstance first revealed in the Justice Department's March report by Inspector General Glenn A. Fine.

"The FBI's comprehensive audit of National Security Letter use across all field offices has confirmed the inspector general's findings that we had inadequate internal controls for use of an invaluable investigative tool," FBI general counsel Valerie E. Caproni said. "Our internal audit examined a much larger sample than the inspector general's report last March, but we found similar percentages of NSLs that had errors."

"Since March," Caproni added, "remedies addressing every aspect of the problem have been implemented or are well on the way."

Of the more than one thousand violations uncovered by the new audit, about seven hundred involved telephone companies and other communications firms providing information that exceeded what the FBI's NSLs had sought. But rather than destroying the unsolicited data, agents in some instances issued new NSLs to ensure that they could keep the mistakenly provided information. Officials cited as an example the retention of an extra month's phone records beyond the period specified by the agents.

Case agents are now told that they must identify mistakenly produced information and isolate it from investigative files. "Human errors will inevitably occur with third parties, but we now have a clear plan with clear lines of responsibility to ensure errant information that is mistakenly produced will be caught as it is produced and before it is added to any FBI database," Caproni said.

The FBI also found that in fourteen investigations, counterintelligence agents using NSLs improperly gathered full credit reports from financial institutions, exercising authority provided by the USA PATRIOT Act but meant to be applied only in counterterrorism cases. In response, the bureau has distributed explicit instructions that "you can't gather full credit reports in counterintelligence cases," a senior FBI official said.

In ten additional investigations, FBI agents used NSLs to request other information that the relevant laws did not allow them to obtain. Officials said that, for example, agents might have requested header information from e-mails—such as the subject lines—even though NSLs are supposed to be used to gather information only about the e-mails' senders and the recipients, not about their content.

The FBI audit also identified three dozen violations of rules requiring that NSLs be approved by senior officials and used only in authorized cases. In ten instances, agents issued NSLs to collect personal data without tying the requests to specific, active investigations—as the law requires—either because, in each case, an investigative file had not been opened yet or the authorization for an investigation had expired without being renewed.

FBI officials said the audit found no evidence to date that any agent knowingly or willingly violated the laws or that supervisors encouraged such violations. The Justice

Department's report estimated that agents made errors about 4 percent of the time and that third parties made mistakes about 3 percent of the time, they said. The FBI's audit, they noted, found a slightly higher error rate for agents—about 5 percent—and a substantially higher rate of third-party errors—about 10 percent.

The officials said they are making widespread changes to ensure that the problems do not recur. Those changes include implementing a corporate-style, continuous, internal compliance program to review the bureau's policies, procedures and training, to provide regular monitoring of employees' work by supervisors in each office, and to conduct frequent audits to track compliance across the bureau.

The bureau is also trying to establish clear lines of responsibility for NSLs, which were lacking in the past, officials said. Agents who open counterterrorism and counterintelligence investigations have been told they are solely responsible for ensuring that they do not receive data they are not entitled to have.

The FBI audit did not turn up new instances in which another surveillance tool known as an Exigent Circumstance Letter (ECL) had been abused, officials said. In a finding that prompted particularly strong concerns on Capitol Hill, the Justice Department had said such letters—which are similar to NSLs but are meant to be used only in security emergencies—had been invoked hundreds of times in "non-emergency circumstances" to obtain detailed phone records, mostly without the required links to active investigations.

Many of those letters were improperly dispatched by the bureau's Communications Analysis Unit, a central clearinghouse for the analysis of telephone records such as those gathered with the help of ECLs and NSLs. Justice Department and FBI investigators are trying to determine if any FBI headquarters officials should be held accountable or punished for those abuses, and have begun advising agents of their due process rights during interviews.

The officials said the final tally of violations that are serious enough to be reported might be much less than the number turned up by the audit, noting that only five of the twenty-two potential violations identified by the Justice Department's inspector general this spring were ultimately deemed to be reportable.

"We expect that percentage will hold or be similar when we get through the hundreds of potential violations identified here," said a senior FBI official, who spoke on the condition of anonymity because the bureau's findings have not yet been made public. Reported in: *Washington Post,* June 14. □

(From the Bench . . . from page 196)

However, the court may have been too quick in assuming that an IP address does not convey content. Certainly, if an IP address points to only one Web site, and if the content on that Web site is all of one type (all anti-war, or all pornographic), that does reveal something.

Also, while pen and trap decisions from the 1970s assumed that dialed number information does not even indicate whether the call was completed (pen and traps now do), Internet transactional information does show not only that a user "called" an IP address, but it also will show that the IP address responded by sending back the content of the homepage as it existed at that time.

Additionally, it is not clear that the following factual statement in the court's opinion was entirely accurate: "The only data obtained during the first phase of the investigation were the to/from addresses of [defendant] Alba's e-mail messages, the IP addresses of the websites that Alba visited and the total volume of information sent to or from his account." It is likely that the pen and trap process actually acquired a lot more than that, and that the government then performed some analysis to extract "to" and "from" data and IP address. For example, "to" and "from" addresses on e-mail do not stick out the way telephone dialing information sticks out: while telephone dialing information in the PSTN is actually carried on a separate channel, "to" and "from" information is buried in digital packets. Analyzing and extracting the "to" and "from" information takes effort, and the court probably should have paid more attention to how the government actually handled the bit stream it was accessing to make sure that the government was not getting more than was authorized.

The Center for Democracy and Technology questioned the ongoing validity of the proposition that transactional data should be accorded zero Constitutional protection. The telephone cases that originated the transactional data doctrine were based on a pretty artificial judicial conclusion: Back in the 1970s, the Supreme Court said, in essence, "We know that everyone who makes a phone call knows that the phone company uses the dialing information to route the call, so everyone who makes a call gives up any interest in the privacy of that information."

To the contrary, of course, whom you call and when and how often and to whom you e-mail does reveal a lot about your associations and activities, and most people do believe it is sensitive and assume it will not be disclosed by the phone company or ISP. Reported in: *CDT Policy Post,* July 25.

Columbus, Ohio

In a ruling with substantial implications for privacy, the federal appeals court for the Sixth Circuit (covering Kentucky, Michigan, Ohio, and Tennessee) ruled June 18 that e-mail users generally enjoy a constitutionally protected right of privacy in the content of their e-mail as it sits in storage with a service provider. The court also declared unconstitutional a provision of the Electronic

Communications Privacy Act (ECPA) that allows government investigators to use a subpoena or court order issued on less than probable cause to obtain older e-mail without notice to the person whose e-mail is being disclosed.

The rule established by the court is simple: in order to obtain e-mail from a service provider, either a) the government must obtain a search warrant issued under the relatively high standard of probable cause set forth in the Fourth Amendment, or b) if the government wants to use a mere subpoena or a court order issued on less than probable cause, it must provide notice to the person whose communications are being sought, giving that person an opportunity to object.

For Internet users, the ruling was a small but significant victory for privacy. The Justice Department has argued that e-mail, while protected in transit, loses the full protection of the Constitution after it reaches a user's inbox on the computer of a service provider. The 1986 ECPA set up a complicated set of rules according different protection to e-mail depending on how and for how long it is stored. The Sixth Circuit decision cuts through all of that, bringing e-mail under a single, Constitutionally based rule.

The ruling will likely channel more law enforcement efforts to obtain the contents of older, stored e-mail into the warrant arena—with its higher probable cause standard—especially when government investigators do not want to give notice to the target of their investigation. As a result, sensitive e-mail content information will likely be accessed later in an investigation, when there is sufficiently strong suspicion to establish probable cause. Therefore, the decision may make it less likely that law enforcement will access the e-mail of innocent persons.

From a corporate perspective, the ruling brings some needed simplicity to the rules governing disclosure of stored e-mail. The ruling should be welcome to e-mail providers for another reason: as Internet users remain acutely sensitive to privacy, this case gives them some measure of confidence, marking out one area where online communications enjoy constitutional protection.

While the U.S. Justice Department is likely to seek to overturn the decision, the case actually should not have a major impact on law enforcement practices, as under ECPA law enforcement agencies already have to obtain a warrant to get current e-mail.

The premise of the court's constitutional ruling—that e-mail users reasonably expect that an e-mail is a private communication between sender and recipient—is obviously true, as reflected in the widespread reliance on e-mail for sensitive communications in commerce, government, and personal relations. Perhaps the only thing remarkable about the case is that the regular federal courts had never addressed the constitutional issues it raised.

The Justice Department is likely to seek to have the ruling overturned by a larger panel of the Sixth Circuit and, in any case, the department will not consider itself bound by the ruling outside the Sixth Circuit. Reported in: *CDT Policy Post,* July 25.

government secrecy

San Francisco, California

A federal judge in San Francisco refused on July 20 to dismiss a privacy rights group's lawsuit against AT&T for allegedly cooperating in illegal government electronic surveillance of United States citizens, and flatly rejected the Bush administration's claims that such litigation threatens national security.

"Dismissing this case at the outset would sacrifice liberty for no apparent enhancement of security," Chief U.S. District Judge Vaughn Walker said in a seventy-two-page ruling denying dismissal motions by both the federal government and AT&T. He also said AT&T and the Bush administration have already disclosed, for all practical purposes, that the company "assists the government in monitoring communication content" as part of federal anti-terrorism efforts. Allowing private parties to claim that their rights were violated by the company's role in the program would not expose state secrets or assist terrorists, Walker said.

It was the first ruling in the nation on the administration's claim that all of the roughly thirty lawsuits challenging the electronic surveillance program must be dismissed because they threaten to expose state secrets.

The suit was filed in January by the Electronic Frontier Foundation as a proposed class action on behalf of all AT&T customers. It claimed that the telecommunications company had given the National Security Agency (NSA) access to its telephone and e-mail networks and database of customer records so the agency could mine them for evidence of contacts with terrorists.

President Bush acknowledged in December that he had authorized NSA, shortly after the terrorist attacks of September 11, 2001, to intercept communications between Americans and suspected terrorists in foreign countries without seeking judicial warrants, as required by federal law. Bush said he had the constitutional power to act without consulting Congress.

Justice Department lawyers asked Walker in June to dismiss the lawsuit against AT&T, arguing that the entire subject of the suit was a state secret. They also said the plaintiffs would be unable to prove essential elements of their case—for example, that they had been harmed by the program, and that AT&T had no legal authorization for any participation in the government's efforts—because all evidence that related to those claims must be kept secret.

Walker rejected those arguments, saying it was premature, at best, to conclude that the case could not proceed without exposing state secrets. "AT&T's assistance in national security surveillance is hardly the kind of 'secret'

that . . . the state secrets privilege [was] intended to protect or that a potential terrorist would fail to anticipate," said Walker, who was named to the federal bench by Bush's father, former President George H. W. Bush, in 1989.

While other lawsuits have been dismissed on the grounds that they would inevitably expose state secrets, Walker said, none of them involved claims of "ongoing, widespread violations of individual constitutional rights." He also rejected AT&T's claim that customers lacked legal standing to sue because they would be unable to show that the federal government had monitored their calls. The gist of the suit is that the company "has created a dragnet" that illegally diverted the customers' communications to the government and violated their rights, Walker said. Reported in: *San Francisco Chronicle,* July 20.

New York, New York

Valerie Wilson may be the best known former intelligence operative in recent history, but a federal judge in New York ruled August 1 that she was not allowed to say how long she worked for the Central Intelligence Agency in the memoir she plans to publish this fall.

Although the fact that Wilson worked for the CIA from 1985 to 2006 has been published in the *Congressional Record* and elsewhere, the judge, Barbara S. Jones of U.S. District Court in Manhattan, said Wilson was not free to say so.

"The information at issue was properly classified, was never declassified and has not been officially acknowledged by the CIA," Judge Jones wrote.

Asked whether the ruling would affect the book's scheduled publication date in October, Adam Rothberg, a spokesman for Wilson's publisher, Simon & Schuster, said only that the book would appear "this fall," suggesting that revisions required by the decision may cause a slight delay. David B. Smallman, a lawyer who represented Wilson and Simon & Schuster in the suit they had filed to include the information, said his clients had not decided whether to appeal.

CIA employees sign agreements requiring them to submit manuscripts to the agency for permission before they are published. The CIA has publicly acknowledged only that Wilson worked there from 2002 to January 2006, when she resigned.

But a February 2006 letter from the CIA to Wilson about her retirement benefits said that she had worked for the agency since November 9, 1985, for a total of "20 years, 7 days," including "six years, one month and 29 days of overseas service." The letter was published in the *Congressional Record* in connection with proposed legislation concerning Wilson's benefits, and it remains available on the Library of Congress's Web site.

Judge Jones acknowledged that the CIA "does not contest that the information is, in fact, in the public domain," adding that "the public may draw whatever conclusions it might from the fact that the information at issue was sent on CIA letterhead by the chief of retirement and insurance services."

But she said a classified court filing from Stephen R. Kappes, the deputy director of the CIA, which lawyers for Wilson and her publisher were not allowed to see, contained a reasonable explanation for the agency's position. Judge Jones did not reveal it, saying only that Kappes has persuaded her of "the harm to national security which reasonably could be expected if the CIA were to acknowledge the veracity of the information at issue."

"His explanation is reasonable," Judge Jones wrote of Kappes's secret statement, "and the court sees no reason to disturb his judgment."

Rothberg said that aspect of Judge Jones's ruling was particularly frustrating. "Trying to argue a case in which the government was able to submit a supersecret affidavit which we were not able to review was like playing an opponent who has fifty-three cards in his deck," he said.

The entire decision, he added, "runs counter to the First Amendment, sets a dangerous precedent, and creates an unreasonable standard by which the government can disappear public information and rewrite history."

The CIA apparently had no significant objections to the manuscript beyond the dispute over how long Wilson worked for them. In a December 2006 letter quoted in Judge Jones's decision, the agency's publication review board said the manuscript was "replete with statements" that "become classified when they are linked with a specific time frame." Reported in: *New York Times,* August 3.

terrorism

Richmond, Virginia

The federal appeals court in Richmond, Virginia, ruled on June 11 that the president may not declare civilians in this country to be "enemy combatants" and have the military hold them indefinitely. The ruling was a stinging rejection of one of the Bush administration's central assertions about the scope of executive authority to combat terrorism.

The ruling came in the case of Ali al-Marri, a citizen of Qatar now in military custody in Charleston, South Carolina, who is the only person on the American mainland known to be held as an enemy combatant. The court said the administration may charge al-Marri with a crime, deport him, or hold him as a material witness in connection with a grand jury investigation. "But military detention of al-Marri must cease," Judge Diana Gribbon Motz wrote for the majority of a divided three-judge panel.

The court, the United States Court of Appeals for the Fourth Circuit, said a fundamental principle is at stake: military detention of someone who had lawfully entered the United States and established connections here violates the Constitution.

"To sanction such presidential authority to order the military to seize and indefinitely detain civilians," Judge Motz wrote, "even if the president calls them 'enemy combatants,' would have disastrous consequences for the Constitution—and the country."

"We refuse to recognize a claim to power," Judge Motz added, "that would so alter the constitutional foundations of our republic."

In a statement, the Justice Department said it would ask the full Fourth Circuit to rehear the case, which could eventually reach the Supreme Court. The statement added that al-Marri represented a danger to the United States.

"al-Marri is an individual who trained at Osama bin Laden's terrorist training camp in Afghanistan," the Justice Department statement said. "In the summer of 2001, he met with Khalid Shaykh Muhammed, the mastermind of the September 11 attacks, and entered the United States just before September 11 to serve as an Al Qaeda sleeper agent and to explore methods of disrupting the U.S. financial system."

"The president has made clear," the statement continued, "that he intends to use all available tools at his disposal to protect Americans from further Al Qaeda attack, including the capture and detention of Al Qaeda agents who enter our borders."

al-Marri was arrested on Dec. 12, 2001, in Peoria, Illinois, where he was living with his family and studying computer science at Bradley University. He was charged with credit card fraud and lying to federal agents, and he was on the verge of a trial on those charges when he was moved into military detention in 2003. He has been held for the last four years at the Navy brig in Charleston.

al-Marri's transfer to military custody, Judge Motz wrote, is "puzzling at best." The usual reason offered for the indefinite detention without charges of enemy combatants is to immobilize them and prevent them from returning to the battlefield. But al-Marri was already held pending his criminal trial.

Judge Motz suggested that the government's purpose in moving al-Marri to military custody was one the Supreme Court held improper in a 2004 decision, *Hamdi v. Rumsfeld,* that of subjecting him to harsh interrogation.

For his first sixteen months in the brig, al-Marri was allowed no contact with his family or lawyers. He was, a lawsuit filed on his behalf in 2005 said, denied basic necessities and subjected to extreme sensory deprivation. Interrogators threatened to send him to Egypt or Saudi Arabia, the lawsuit said, "where, they told him, he would be tortured and sodomized and where his wife would be raped in front of him."

Judge Motz, joined by Judge Roger L. Gregory, wrote that al-Marri might well be guilty of serious crimes. But she said the government could not circumvent the civilian criminal justice system through military detention. The court reversed a lower-court decision that had denied al-Marri's challenge to his detention.

Two other men have been held as enemy combatants on the American mainland since the September 11 attacks. One, Yaser Hamdi, was freed and sent to Saudi Arabia after the Supreme Court allowed him to challenge his detention in 2004. The other, Jose Padilla, was transferred to the criminal justice system last year. He is now on trial on terrorism charges in federal court in Miami.

All three judges agreed that a new law, the Military Commissions Act, did not defeat the court's jurisdiction. The law says the federal courts have no jurisdiction to hear challenges from any noncitizen "who has been determined by the United States to have been properly detained as an enemy combatant."

Unlike the men held at Guantánamo Bay, Cuba, al-Marri has not yet received even the cursory review of his designation as enemy combatant, performed by a military panel known as a combatant status review tribunal. The Military Commissions Act, Judge Motz concluded, "was not intended to, and does not, apply to aliens like al-Marri, who have legally entered, and are seized while legally residing in, the United States."

The majority and the dissenting judge, Judge Henry Hudson, visiting from the U.S. District Court for the Eastern District of Virginia, differed mainly on whether civilians may ever be classified as enemy combatants.

Because al-Marri was not alleged to have fought with the Taliban or the armed forces of any enemy nation or to have engaged in combat with United States forces, Judge Motz wrote, Bush was powerless to have the military detain al-Marri any more than he could have ordered the military detentions of "the Unabomber or the perpetrators of the Oklahoma City bombing."

In dissent, Judge Hudson wrote that Bush "had the authority to detain al-Marri as an enemy combatant or belligerent" because "he is the type of stealth warrior used by Al Qaeda to perpetrate terrorist acts against the United States."

Judges Motz and Gregory were appointed by president Bill Clinton, and Judge Hudson by Bush.

Jonathan Hafetz, one of al-Marri's lawyers and the litigation director of the Liberty and National Security Project of the Brennan Center for Justice at New York University School of Law, said a contrary ruling could have had devastating consequences. Under the administration's theory, Hafetz said, "the executive could effectively disappear people by picking up any immigrant in this country, locking them in a military jail, and holding the keys to the courthouse. This is exactly what separates a country that is democratic and committed to the rule of law from a country that is a police state."

The decision appears unlikely to have any immediate effect on the men held at Guantánamo. Judge Motz emphasized that the court's analysis was limited to those with substantial connections to the United States who had been seized and detained within its borders.

Still, White House critics said the ruling was only the latest in a series of setbacks for the administration.

"Last Monday, two military judges handpicked to preside over the Guantánamo Bay trials rejected the claim that a presidential order alone was sufficient to give the courts jurisdiction over the detainees," said Jennifer Daskal, advocacy director of the United States Program of Human Rights Watch. "And today, one of the nation's most conservative courts squarely rejected the president's unprecedented assertion that he, alone, could hand out the label of 'enemy combatant' without any sort of independent court review."

The appeals court ordered the trial judge in the case to issue a writ of habeas corpus directing the secretary of defense to release al-Marri from military custody "within a reasonable period of time to be set by the district court." The government can, Judge Motz wrote, transfer al-Marri to civilian authorities to face criminal charges, initiate deportation proceedings against him, hold him as a material witness in connection with a grand jury proceeding, or detain him for a limited time under a provision of the USA PATRIOT Act.

But the military cannot hold him, Judge Motz wrote. "The president cannot eliminate," she wrote, "constitutional protections with the stroke of a pen by proclaiming a civilian, even a criminal civilian, an enemy combatant subject to indefinite military detention." Reported in: *New York Times,* June 12.

yard signs

East Windsor, New Jersey

In a ruling that could have implications far beyond New Jersey, the State Supreme Court on July 26 upheld the right of homeowners' associations to restrict the posting of political signs and other forms of constitutionally protected speech, as long as the restrictions are not "unreasonable or oppressive."

"We conclude that in balancing plaintiffs' expressional rights against the association's private property rights, the association's policies do not violate the free-speech and right-of-assembly clauses of the New Jersey Constitution," the court ruled unanimously.

The case is rooted in the lawns of Twin Rivers, a planned unit development of apartments, condominiums, town houses, and single-family houses that is home to about ten thousand people in the central New Jersey township of East Windsor. Margaret and Haim Bar-Akiva challenged whether the Twin Rivers Homeowners' Association could restrict their putting political signs on their lawn.

The homeowners' association rules in Twin Rivers did not forbid all political signs, but allowed signs only in flower beds and windows.

Like many big developments around the country, Twin Rivers is run by a homeowners' board, and some residents there objected to the restrictions on the political signs as well as restrictions on the use of community rooms for meetings and the publication of dissenting views in the homeowners' association newspaper.

A state judge supported the association's contention, ruling that people who moved to the development were aware of the rules and had to abide by them. But last year a state appeals court reversed that ruling, finding that residents of Twin Rivers were entitled by the State Constitution to express themselves as they wished. The Supreme Court reinstated the trial court's decision.

The ruling could affect about 1.3 million New Jersey residents—nearly 40 percent of all private homeowners—and more than fifty million people around the country whose homes are part of an association.

Experts said that a case exploring the ability of an association to regulate free speech had never before reached the high court in any state. "The significance of the decision is that it is the first time that a state supreme court has really head-on confronted this issue," said Robert M. Diamond, a lawyer who has tracked the case closely.

Because the ruling concerns an interpretation of the New Jersey Constitution, over which the State Supreme Court has ultimate authority, there are no other avenues for appeal. While the ruling has no force outside New Jersey, it could serve as a powerful example for other state courts.

Not surprisingly, lawyers for the association lauded the court ruling. "The Twin Rivers rules that were at issue all were reasonable in scope," said Barry S. Goodman, a lawyer for the association. "I think this entire lawsuit was unnecessary."

But in a telephone interview, Bar-Akiva said he was "somewhat disappointed" in the ruling. "That's the way it goes," he said.

Frank Askin, who argued the case before the Supreme Court for the Bar-Akivas, said he was encouraged because while the court found that the Twin Rivers rules were not unreasonable, it left open the possibility that other guidelines by other associations might not meet that standard.

"This is really a mixed decision," said Askin, a member of the Constitutional Litigation Clinic at Rutgers University School of Law. He said the ruling was a signal to homeowners' associations across the state that although they are empowered to regulate certain forms of expression, that authority must be exercised with caution.

The ruling drew the attention of lawmakers, including State Senator Ronald L. Rice, a member of the Community and Urban Affairs Committee, who has long been an advocate for the rights of homeowners.

"Certainly, the legislature should acknowledge and consider the court's opinion," he said. "There are numerous issues which impact on owners in these communities, which

are the main form of ownership for newly constructed housing in New Jersey." Reported in: *New York Times,* July 27.

commercial speech

Glendale, Ohio

The full U.S. Court of Appeals for the Sixth Circuit rejected a Glendale ordinance on June 29 that threatened citizen Chris Pagan with jail time or a $250 fine for a routine act of free speech: putting a for-sale sign in the window of his car while it was parked on the street in front of his home. The court declared the city's sign ban a violation of Pagan's First Amendment rights, overturning an earlier decision of a three-judge panel of the court upholding the ordinance.

"The court today restored sanity to the First Amendment, ruling that the whim of government bureaucrats is not enough to justify censorship," said Jeff Rowes, an attorney with the Institute for Justice, which represents Pagan. "This decision puts the burden back on government to justify restrictions on free speech—rather than making people like Chris prove they deserve constitutional protection for their rights."

The case is the latest in a nationwide legal battle over what constitutes so-called "commercial" speech and whether such speech deserves the full and equal protection of the First Amendment. Under current law, not all speech is equally protected by the First Amendment. Instead, certain categories, like political speech and artistic expression, receive greater protection than speech that proposes an economic transaction. That sometimes leads to situations where, as in Glendale, some speech is free (a "Support Our Troops" or "Go Buckeyes" car sign would be perfectly legal) but other speech (a for-sale sign) is not—and the government decides which is permitted.

"Had the city prevailed, commercial speech would have been subject to the unfettered discretion of government bureaucrats," said Chip Mellor, president and general counsel of the Institute for Justice. "The city of Glendale tried to use the 'commercial speech' label as an excuse to ban speech that it did not like. Today's decision reverses what would have been a dangerous step toward stripping commercial speech of constitutional protection."

The legal confusion about which speech gets full First Amendment protection has real-world implications for citizens nationwide. In Redmond, Washington, for example, the city clamped down on bagel shop owner Dennis Ballen because he hired someone to carry a sign pointing customers to his out-of-the way location. In Mesa, Arizona, donut entrepreneur Edward Salib was forced to take down posters in his shop advertising breakfast treats because of the city's sign ordinance. Both entrepreneurs had no choice but to take their battle to the courts; Salib lost, but Ballen won a victory before the U.S. Court of Appeals for the Ninth Circuit last year. Reported in: Institute for Justice Press Release, June 29. ☐

(Censorship Dateline . . . from page 188)

art

Kansas City, Missouri

One of artist Ritchie Kaye's "Womb Wisdom" banners hung in the Healing Arts Gallery at Truman Medical Center on Hospital Hill before it was removed after employees complained. If any place could be considered womb-friendly, it would be Truman Medical Center on Hospital Hill. More babies are delivered there than at any other hospital in Jackson County.

But three banners featuring larger-than-life photographs of females, each with a superimposed symbolic "womb" on her pelvic region, were removed from an exhibit in the hospital's Healing Arts Gallery. The reason: complaints from hospital employees who were offended by the images. Reported in: *Kansas City Star,* July 2.

foreign

Kindersley, Canada

References to bullying, breasts, and the word "bazoongas" have made a children's book nominated for a Saskatchewan award too hot to handle for a southwestern Saskatchewan school. British Columbia–based publishing company Sono Nis Press says that *Trouble on Tarragon Island,* a novel by author Nikki Tate, has been censored by Elizabeth School, a kindergarten to grade seven school in Kindersley.

Publisher Diane Morriss said the school's librarian objected to a scene where the young heroine is teased about her activist grandmother posing semi-nude in a calendar, with taunts about her grandmother's saggy breasts, or "bazoongas." She said the librarian was offended and felt it was not appropriate for the book's recommended readers between the ages of eight to fourteen.

Morriss said she's bewildered by the situation, saying this is the first objection that has been made to the book. "It's been nominated for three awards. . . . Everyone else that's worked on the book, the editors and proofreaders, they're all extremely surprised, too, and they felt it was an overreaction to the scene in the book," she said in an interview. "I think they've made something out of nothing on this issue. I really don't get it."

Morriss said the book's language is tame compared to what would likely be used in real life and could have been a catalyst for discussion about issues such as bullying.

Wayne Parohl, who was principal of Elizabeth School before retiring at the end of the school year, doesn't agree with the publishing company calling it censorship, saying it's common practice for books to be vetted by school librarians before they are made available to students. In this case, the book was screened and was found to be not suitable for addition to Elizabeth School's library because of the language used in the bullying scene in question, he said.

"Do you work from the assumption that everything that is published automatically is guaranteed a spot in a school library until it's removed? And then if something doesn't make it on the shelves you call it censorship?" said Parohl. He said the book would be appropriate for older students and would be passed along to the high school in Kindersley.

The book has been nominated for a Willow Award, a Saskatchewan book award that is chosen by young readers. Morriss said Kindersley schoolchildren who want to vote in the contest won't be able to read *Trouble on Tarragon Island* unless they purchase the book. Reported in: *Saskatoon Star-Phoenix,* July 5.

Xiamen, China

A southern Chinese city is considering a new rule banning anonymous Web postings after residents used the Internet to successfully halt construction of a massive chemical factory. A Xiamen official told local reporters the proposed regulation bars anonymous postings online and requires Web sites to approve all postings.

Xiamen would be the first city in China to require the use of real names online, Tian Feng, the vice director of the Xiamen Municipal Industry and Commerce Bureau, said.

In June, plans for a chemical plant in Xiamen were suspended after residents sent nearly one million text messages to friends and family, urging the government to abandon the $1.4 billion paraxylene plant project because of its alleged health and environmental risks. One widely circulated message said the resulting devastation would be like "an atomic bomb in Xiamen."

Mobile phone text messages and Internet postings were used to organize peaceful rallies that caught the attention of bloggers nationwide and helped push Beijing to pressure the city to suspend work on the factory. The project is undergoing a new environmental impact assessment ordered by the local government.

"Following the opposition to the PX project, the government felt it should exert some control over Internet content," Tian was quoted as saying. But the report quoted Lin Congming, vice propaganda chief of the Xiamen Communist Party committee, as saying there is no relation between the chemical plant and the regulation. He also noted the regulation was only a draft.

News of the proposed regulation quickly drew fire from the *South Metropolis News*—one of China's most aggressive and outspoken sources for news. The Guangzhou paper quoted a legal professor as saying that Xiamen had no right to legislate such changes.

"Only the National People's Congress has the right to legislate on this issue," He Bing of the China University of Political Science and Law in Beijing was quoted as saying on the paper's Web site. Reported in: *International Herald Tribune,* July 6. □

(FTRF Report . . . from page 178)

is not an endorsement of the use of mandatory filtering in other contexts, especially the public library. As Justice Kennedy noted in his opinion in the *United States v. ALA* lawsuit challenging the Children's Internet Protection Act (CIPA), adult users retain the right to request access to the Internet free of any restrictions imposed by filtering software. We continue to watch with interest the lawsuit filed in Washington State, *Sarah Bradburn et al. v. North Central Regional Library District,* which challenges a library's restrictive use of Internet filters and its policy of refusing to honor adults' requests to temporarily disable the filter for research and reading.

Just as FTRF participates in challenges to federal laws such as COPA that criminalize Internet content deemed "harmful to minors," FTRF also participates in challenges to state laws that similarly criminalize Internet content. The most pressing lawsuit, *The King's English v. Shurtleff,* challenges a Utah statute that extends the state's "harmful to minors" provisions to the Internet and requires Internet service providers to block access to Web sites placed on a registry maintained by the state's attorney general, who is empowered to declare a Web site "harmful to minors" without judicial review.

For much of this past year, the Utah legislature attempted to amend the law to address the concerns raised by FTRF and its partners, but the amendment adopted by the legislature did not offer sufficient protection for free expression on the Internet. Consequently, the plaintiffs, who include FTRF, ABFFE, the Association of American Publishers (AAP), the Comic Book Legal Defense Fund, the ACLU of Utah, and several Utah bookstores, Internet service providers (ISPs), and residents, filed an amended complaint on April 30. The state has asked the court to dismiss the complaint, and the parties are now briefing that motion.

FTRF also is participating as an *amicus* in *Gorran v. Adkins Nutritionals, Inc.,* a consumer protection lawsuit that seeks to strip First Amendment protection from the claims made in the book. FTRF has joined with AAP and ABFFE to file an *amicus* brief supporting the right of persons such as the late Dr. Adkins to promulgate their ideas without fear that they will be penalized for their speech. The case is

pending before the Second Circuit Court of Appeals; we are waiting for the court to set a date for oral arguments.

The Eighth Circuit Court of Appeals heard *Entertainment Software Association et al. v. Hatch,* a lawsuit challenging Minnesota's Restricted Video Games Act, which imposes civil penalties on minors who rent video games rated "AO" or "M" by the Entertainment Software Rating Board and requires retailers to post signs warning minors about the prohibition. After the District Court of Minnesota ruled the law unconstitutional in July 2006, FTRF joined with ABFFE, AAP, the International Periodical Distributors Association, the Motion Picture Association of America, Inc., Publishers Marketing Association, and Recording Industry Association of America to file an *amicus* brief urging the Eighth Circuit Court of Appeals to uphold the district court's decision. We are now waiting for the court's decision.

Protecting Privacy and Anonymity

Since 2001, FTRF's most urgent concerns have been the lawsuits challenging the FBI's use of its expanded powers under the USA PATRIOT Act. In the last year, however, we have watched with dismay as these suits have concluded without vindicating our right to be free from government surveillance in the library and on the Internet.

We remain committed, however, to participating in lawsuits aimed at establishing a broader right to privacy in what we read and view, as well as the right to read anonymously. For this reason, FTRF has joined an *amicus curiae* in *New Jersey v. Reid,* a criminal action filed against Shirley Reid after she was accused of unlawfully accessing her employer's computer. The New Jersey Court of Appeals upheld the trial judge's decision to suppress information obtained by the police from Comcast Corporation, Reid's ISP, which allowed the police to identify and arrest her. The court of appeals ruled that the New Jersey state constitution confers a privacy interest in a person's ISP account information, such that a police officer must obtain a valid subpoena in order to obtain that information from an ISP. The state has appealed the court's decision to the New Jersey Supreme Court, and FTRF will join with the New Jersey Library Association, the ACLU of New Jersey, the Electronic Frontier Foundation (EFF), and Privacy Rights Clearinghouse to file a brief in support of Internet users' privacy rights.

A similar action, *Forensic Advisors, Inc. v. Matrixx Initiatives, Inc.,* has ended without a final determination. As you may recall, this lawsuit sought to quash a subpoena served on a financial advice newsletter. The subpoena, if upheld, would have required publisher Timothy Mulligan to turn over the names of the newsletter's subscribers. Early this year, Matrixx dismissed the underlying lawsuit and withdrew its subpoena, rendering moot Mulligan's challenge.

Finally, our sole remaining challenge to the USA PATRIOT Act, *John Doe and ACLU v. Gonzales, et al.,* remains pending before Judge Marrero of the Southern District of New York. In the original lawsuit, Judge Marrero ruled that the statute authorizing National Security Letters (NSLs), which permits the FBI to compel the production of information without judicial review, is unconstitutional. After the Second Circuit Court of Appeals remanded the case to the district court and the ACLU filed an amended complaint, the FBI withdrew the NSL but sustained the gag order that accompanied the NSL. Rather than abandon his claims, the plaintiff has chosen to contest the regime of silence surrounding the use of NSLs by continuing the constitutional challenge to the gag order. John Doe's motion for summary judgment remains pending.

Religion and the Public Library

The issue of religion continues to bedevil libraries across the country. A library board in Colorado found itself defending its open display case policy after a library user objected to a conservative religious group's display about homosexuality; other libraries continue to grapple with religious groups' use of meeting rooms, or the use of labels to identify books with particular religious content. Libraries regularly call FTRF and ALA to obtain guidance on these issues.

For this reason, the FTRF board was pleased to meet this week with Dan Mach, who previously served as one of FTRF's legal counsel and is now with the ACLU's Program on Freedom of Religion and Belief. Dan reviewed the current status of the law governing religion in public forums, and discussed particular cases in light of the Supreme Court's decisions in this area. Of particular interest was his review of *Faith Center Church Evangelistic Ministries v. Glover,* the lawsuit filed by a local religious group after the Contra Costa County (Calif.) Public Library refused to let it use the library's meeting rooms for a religious service. Although the district court ruled the group was likely to succeed on its First Amendment claims, the Ninth Circuit Court of Appeals reversed the district court's finding, upholding the library's policy as a reasonable restriction in light of the library's intended use of its space. As a result of the Ninth Circuit's decision, libraries across the country were left with questions about their meeting room policies and other policies addressing behavior. It appears these questions may be answered soon, as the plaintiffs have filed a petition asking the Supreme Court to review the Ninth Circuit's decision. While FTRF is not currently a participant in this lawsuit, it will continue to monitor this case due to its importance to the library community.

Freedom of Information Act Request

A year ago, FTRF and ALA filed a Freedom of Information Act (FOIA) request on behalf of the organi-

zations and more than fifty members with the FBI. The request sought any records of criminal investigations or surveillance of the organizations and their members related to, or caused by, their opposition to the USA PATRIOT Act.

In February, the FBI informed our legal counsel, Theresa Chmara, that it did not have any records responsive to our request. After reviewing the circumstances surrounding the request, Theresa recommended that neither ALA nor FTRF pursue an appeal, as she believed that insufficient evidence existed to support an appeal of the FBI's determination. Keith Michael Fiels and Judith Krug accepted her recommendation, based both upon her expertise and a desire not to expend funds on legal actions where there appears to be little possibility of success.

Individuals still concerned about potential surveillance by the FBI or other federal agencies can still file their own personal requests for records with the FBI and the Department of Justice and ask that any responsive records be sent directly to them. ALA's Office for Intellectual Freedom will be happy to assist anyone who desires to file his or her own FOIA request.

FTRF Program at Annual Conference

It was my distinct pleasure to provide an introduction for Theresa Chmara at our Sunday afternoon program addressing recent litigation affecting libraries and library users. As is her custom, Theresa provided ALA members with a thorough and thoughtful update and gave us much practical information about how the outcome of these lawsuits affects the day-to-day operation of libraries. The program was recorded, and soon will be posted at www.ftrf.org. We at the foundation are very lucky to have Theresa's wise counsel and guidance as we pursue our mission of defending the freedom to read, and we are grateful for all her hard work on our behalf.

State Legislation

We continue to see state legislation limiting the freedom to read introduced in the states. In many instances, as in Illinois, concerted efforts by librarian(s) and library users defeated state legislation tying library funding to the use of Internet filtering software. But in other states, such as Virginia, state legislatures have adopted mini-CIPAs that require public libraries to install filters or lose state funding.

Our concern over the USA PATRIOT Act has born fruit in some states, such as Connecticut and Oregon, which have revised their statutes to extend further privacy rights to library users. In Illinois, where conservative organizations mounted an attack on the library confidentiality statute, librarians worked hard to halt or limit the changes sought by local police officers. Unfortunately, despite these efforts, local police in Illinois now can demand that libraries identify library users without presenting any court order.

2007 Roll of Honor Recipient Lucille C. Thomas

It is my honor to report that on Saturday evening during the Opening General Session, we presented the 2007 FTRF Roll of Honor to Lucille C. Thomas, immediate past president of the Brooklyn (N.Y.) Public Library's board of trustees and former assistant director of the New York City Department of Education, Office of Library, Media, and Telecommunication.

Lucille has been a stalwart member of the foundation during her many years of service to libraries and library users, standing fast behind the idea that libraries should be proactive in reaching out to underserved populations and committed to the principle that, when a person uses a library, his or her ability to learn should not be restricted by censorship. The FTRF board of trustees is privileged to add Lucille to the FTRF Roll of Honor.

End Notes

This is my last report to you as the FTRF president; my second two-year term concludes with this meeting. It has been a very distinct honor and privilege to participate in the work of the foundation, and I will, of course, actively continue to support its work.

At its organizing meeting for 2008, the FTRF board of directors elected Judith Platt as president. Judith is director of Freedom to Read and Communications and Public Affairs at the Association of American Publishers. Judith shares our passion for the foundation's work as ably demonstrated by her service as a foundation trustee for many years.

I am pleased to report that our new organizational membership category is developing legs. Trustee James G. Neal, Columbia University, reported to the board that twenty-four member libraries of the Association of Research Libraries have become members, most at the $1,000 level this year—and Jim promises many more to follow. We urge all of you to ask your home institutions to do likewise. As ALA's First Amendment legal defense arm, the challenges are many and the stakes are high.

And finally, I invite all of you personally to join me in the foundation's efforts to defend First Amendment rights by becoming an FTRF member. You can do so by sending a check to Freedom to Read Foundation, 50 E. Huron St., Chicago, IL 60611. You can also use a credit card to join the foundation. Call (800) 545-2433, ext. 4226, or visit us online at www.ftrf.org to use our online donation form. ☐

(Fostering Diversity . . . from page 177)

As librarians become more aware of the challenges and opportunities surrounding media consolidation and its local impact, they are devising new strategies to ensure broader access to a diversity of resources. In addition to reviewing their selection and organization policies, they are using new technologies to create and preserve knowledge and deploying new methods to promote media literacy and teach critical thinking skills.

Given that the mainstream media are consolidating and the alternative voices are ever smaller and less commercialized, librarians must no longer depend on traditional, passive approaches to acquisition. They must be vigilant and assertive in seeking out alternative voices. In short, libraries must assume an active leadership role if they are to ensure access to a broad spectrum of ideas. Otherwise, they will abrogate their responsibility to guarantee free expression and promote the public interest in the digital age.

I. Collection Development and Management

The development and management of responsive collections is a central obligation of librarians and library workers. The quality of a library's services and programs is directly dependent on the strength of the collection. Thus, it is essential that the collection fully reflects the needs and interests of the library's community of users, and furthermore, that the library staff is proactive in anticipating needs and acquiring the diverse and often unique resources necessary to meet these needs. Building collections and providing access to materials in different formats produced by independent, small, and local producers helps to ensure that multiple voices, perspectives, and ideas are represented in the collection.

First and foremost, libraries should implement collection development and management policies and practices that foster this goal. The selection, acquisition, cataloging, and organization of materials, in particular, have a profound impact on the richness, quality, and perceived relevance of a library's collection. Librarians should adopt collection development and selection policies that have clear, unambiguous guidelines for developing balanced, diverse collections. While there are numerous popular tools that identify and review materials from mainstream media outlets, librarians need to consult additional sources to obtain information about lesser-known materials. Practices such as vendor selection, ordering procedures, subscription decisions, and license agreement negotiations should reflect the goal of building a diverse collection of materials and media. Likewise, the cataloging and organization of materials should facilitate access to the full range of resources acquired by a library. The strategies discussed and outlined in the following sections are designed to promote a comprehensive and inclusive approach to collection development and management.

Collection Building

The framework and vision for developing a responsive, diverse, high-quality library collection necessitates well-articulated selection policies and guidelines. Such policies and guidelines should incorporate the characteristics and features outlined in the strategies listed below.

Actions:

- Prepare and revise collection development and selection policies that articulate the importance of a diverse collection of resources, and provide specific guidelines that reflect this vision.
- Promote a diversity of sources, outlets, and viewpoints essential to an informed citizenry and a robust marketplace of ideas.
- Ensure that selection criteria promote the need for lesser-known sources that may or may not be reviewed.
- Commit to diversifying the library's collection even more.
- Assign library staff to monitor new small, independent, and alternative press titles and make recommendations for the collection.
- Review, select, and showcase titles from small, independent, and alternative media producers.
- Preserve, organize, and distribute alternative media resources.
- Acquire and support open access publications.
- Encourage and include diverse sources and viewpoints in institutional repositories and locally digitized collections.
- Develop selection criteria that recognize the need to acquire alternative sources of information, including blogs, wikis, and other emerging digital resources as they become available.
- Train staff in the importance of including alternative sources of information in the collection.

Acquisitions

Collection development and selection policies serve primarily to articulate a vision for the library's collection. At the same time, library acquisition practices are the nuts and bolts that translate policies into reality. Libraries should develop and review acquisition procedures on a regular basis to ascertain their effectiveness and timeliness in identifying and acquiring diverse materials and sources of information. Libraries need to consider issues related to purchasing options, budget allocations, and vendor selection and performance.

Actions:

- Commit a target percentage of the book budget for materials out of the mainstream and foreign publications.

- Seek out supplemental funds to purchase additional materials out of the mainstream; for example, from the library's Friends group.
- Encourage distributors to include more diverse media producers in their approval plans and inventories.
- Review approval plan profiles to ensure that they identify and procure a diversity of media.
- Order from and pay small and independent publishers quickly and directly, especially when their materials are not readily available from library distributors.
- Encourage small, independent, and alternative producers to offer bulk discounts or preferential rates for multibranch library systems, library consortia, and library networks.
- Obtain public performance rights that allow groups to show small, independent, and alternative films, and also buy films for personal or face-to-face classroom use not requiring rights clearance, which are thus less expensive.
- Facilitate the acquisition of local materials and publications not commonly acquired by libraries to provide greater and sustainable access to the public.
- Distribute guides to help small, independent, and alternative media producers work effectively with libraries.
- Produce guides to help librarians work with small, independent, and alternative media producers.
- Establish standing orders with independent presses and media producers.

Cataloging and Issues of Access

User-centered cataloging and classification practices help to facilitate access to library collections. It is important to pay particular attention to the procurement and cataloging of small, independent, and alternative sources of information, and commit to the timely processing of these materials. The strategies listed below help to encourage ready, equal, and equitable access to all the resources in a library's collection.

Actions:

- Implement collection building policies and practices that place a high priority on the acquisition and cataloging of diverse sources of information.
- Place a high priority on the cataloging of alternative, independent, and small media resources, as they are not typically represented in shared cataloging databases.
- Use subject headings that reflect ideas in small, independent, and alternative media materials.
- Lobby the Library of Congress to adopt or revise headings that are missing or misleading.
- Include the holdings of local unique libraries and information centers in library catalogs.
- Utilize collection-specific cataloging approaches to describe and extend access to special collections.
- Use folksonomies and portable and free or open access social bookmarks.

Electronic Resources and Technologies

Collection building practices that ensure access to sources of electronic information help libraries represent the increasingly diverse spectrum of perspectives and formats offered. While the trend toward group purchases and bundled packages of databases presents libraries with hard-to-resist savings, they should encourage the inclusion of more diverse sources in these packages, and in their collections overall. Libraries cannot ignore the growing importance and influence of new and emerging interactive social media, such as blogs, social networks, and wikis, which have quickly gained a foothold in the culture and are popular with many users.

The selection and use of information technologies to access, organize, and manage the library's electronic resources also affects the quality and richness of a collection. Although one of their core values is free and open access to information, libraries may overlook the conceptual foundations and design features of technologies that are available to access and distribute the information they collect. In the name of convenience, libraries often adopt proprietary technology for their OPACs and other library systems that lock them into expensive license agreements and inflexible software and management systems.

One prominent example is open source systems. Open source systems, which emerged in the mid-1980s, challenge more traditional software concepts. The term open source refers to software in which the source code is freely available for others to view, modify, and use. Free or open source software (FOSS) is developed and maintained by a community of developers that crosses various communities and national boundaries rather than a single corporation. As such, FOSS has openness and the concept of access to information embedded in its structure and design. Because open source software is becoming increasingly robust, libraries no longer need to rely solely on expensive proprietary software. Free access to information is inherent in these technologies. Information systems and technology applications that incorporate these features help libraries build diverse digital collections.

Actions:

- Avoid sole or over reliance on such mainstream Web-accessible information sources as widely available commercial databases, federated search engines, and periodical finders.
- Purchase databases that provide access to alternative and international as well as mainstream titles.
- Negotiate and sign license agreements and contracts that enable open access and guarantee user rights such as fair use and first sale sharing of copyrighted works.
- Identify, evaluate, acquire, and promote access to high-quality, free, inexpensive, and independent databases, periodicals, Web sites, blogs, electronic newsletters, RSS feeds, podcasts, shareware, wikis, free e-texts and e-media, and other electronic information sources, espe-

cially those from small, local, governmental, nonprofit, independent, and nonmainstream sources.
- Feature small, independent, and alternative media resources on the same database pages with commercial databases.
- Discover and utilize multiple ways (for example, e-pathfinders) to promote these resources to users.
- Feature access to free Web sites and services that enable users to locate, buy, borrow, read online, acquire, or print public domain, hard-to-find, and out-of-print books and other media.
- Promote access to a variety of free Web sites that enable the creation, sharing, and remixing of knowledge, music, video, and other art.
- Feature access to the Internet Archive, which provides access to the Internet of the past, including library catalogs and censored pages otherwise inaccessible.
- Educate and train users in media, information, and other twenty-first-century literacies.
- Streamline access to free and independent databases along with commercial ones through federated searches, periodical finders, staff picks, and other Web site marketing devices.
- Encourage and request database aggregators to include small, independent, and alternative resources in their packages, specifying sources that will be most useful to your community.
- Utilize free open source software.
- Support the development of open source library applications.
- Serve as a local community resource regarding technology, including open source applications.
- Offer space for local LINUX and UNIX user group meetings.
- Enhance access to open source software and other technology resources.
- Ensure permanent public access and ownership of electronic materials.
- Acquire archival copies of licensed digital content.

Reference Collections

Reference sources are often the first and most frequently used collection in a library. These sources, which typically include indexes, databases, and bibliographies, play a unique role as gateways to other materials. As such they become a critical means for providing users with access to alternative and diverse sources of information.

Actions:
- Increase access to sources that include small, independent, and alternative media producers by purchasing relevant reference tools, such as indexes, databases, bibliographies, and other sources.
- Create in-house guides and pathfinders that include diverse sources to information.
- Encourage index and abstract companies and content aggregators to include more diverse media titles in their databases.
- Urge the public to pursue public domain materials and offer to guide them in their use of these sources.
- Develop an awareness of small, independent, and alternative media producers and keep track of new resources worthy of purchase for reference.

Children's Collections

Normal intellectual and emotional development moves children from the limited perspectives of infancy to an increasing awareness and understanding of others. Like all normal development, however, this requires experience. While it is a truism to say "all children deserve to see themselves reflected in their books," it is not enough. To develop empathy and become responsible members of a multicultural society, children also need authentic, appealing portrayals of others. Consolidation of media tends to limit the range of such portrayals. It increases pressure to use children's media for product placement and to repeat commercially successful formulae, and it threatens support for material that portrays children in homes with nontraditional lifestyles—or even in homes where many products cannot be afforded.

Actions:
- Purchase a diversity of media materials for young people.
- Consider small, independent, and alternative media materials as award-winners.
- Make producers of alternative media materials aware of standard reviewing tools and awards as well as usual procedures for nomination.
- Create and improve active reviewing tools for non-book children's media, including Web sites.
- Give children opportunities to engage with people from different backgrounds and to apply the perceptions of good literature in their own lives by offering a diverse range of children's programming.

Young Adult Collections

Young adults and teenagers need space they can call their own—a space that is inviting, enriching, and safe. In order for them to feel at home in and continue to use their school and public libraries, they must feel welcome and encouraged to put their stamp of ownership on the library's collection and, indeed, the library as a whole.

Having grown up with the Internet, teenagers are far more likely to have knowledge of a wide array of cultures. Familiarity breaks down prejudice, and by using and exploring the Internet teens can expand their social circles far outside their immediate realm. For some teens, the library is the only technology source available to them,

going beyond a general source of information to the ultimate social networking site. As such, unfiltered Internet access is necessary in order to sustain this exploration.

The main question a teenager is asking is "Who am I?" Two ways they define themselves are through what they read and what they create. By sharing their reading and ideas with others, they can begin to answer that question. In order for teens to feel that their library is really their own, they must see themselves reflected in their literature and be encouraged to create and interact with library materials, including print, media, and electronic resources.

Actions:

- Develop a diverse collection of traditional and new format materials of interest to young adults.
- Encourage young people to exchange ideas using library collections, programs, and services.
- Provide space for teen writers and artists to interact and to publish their own writing via a library-sponsored blog.
- Display young people's photographs through exhibits or online photo galleries at such sites as Flickr or Photo Bucket.
- Acquire CDs created by local musicians, especially music created by students.
- Subscribe to local school newspapers and similar publications.
- Maintain a collection of school yearbooks.
- Create a collection of zines and offer programs on how to create zines.

Government Information

The public's access to government information is the foundation of a democratic society. Libraries have a long history of providing access to government information, particularly through its participation in the Federal Depository Library Program. This role is changing, as government information is increasingly available in electronic format, and commercial vendors provide sophisticated interface overlays with the goal of improving searching and access options. As this trend becomes more prominent, libraries need to promote their unique role in making federal, state, and local e-government information and services available, along with assistance from knowledgeable staff. The library's Web site can offer a starting point to accessing government information on the Web. This, combined with the library's print collections, can be a vital nexus to informed citizens.

Actions:

- Showcase government information as an essential information tool.
- Work with government and other local officials to satisfy the public's right to know.
- Promote local freedom of information and sunshine laws.
- Teach civic literacy skills that raise awareness about government information and services.
- Work with local governments to ensure access to and preservation of local ordinances and similar information.
- Showcase and present local government information for the benefit of the community.
- Maintain data that help inform voters.

Community Information

Libraries serve an important role as community information centers, creating a local information environment that is essential to civic engagement, cultural enrichment, government services, and emergency preparedness. They gather, collect, organize, manage, and preserve as well as create content by and about the local community. Most libraries also maintain unique items and collections of local or regional significance. Because the loss of local history can easily occur without institutional support, libraries should recognize their responsibility for developing and maintaining such collections, especially in communities that lack local historical societies or museums. Further, without ongoing institutional support, existing local history and special materials collections can become hidden collections at greater risk of loss, unchecked deterioration, and theft. Although the problem is national, the solutions need to be local.

Actions:

- Encourage the public to understand and participate in the shaping of local issues.
- Collaborate with the community to design and plan library buildings and services that enable and assist local residents to prevent, manage, and recover from long- and short-term disasters.
- Serve as a repository of information about the local community, its people, and its history in order to foster a unique community identity.
- Collect local government and other information so residents can find pertinent facts and other information about their communities.
- Produce local information and referral databases and make them freely available on the library's Web site.
- Address the special concerns of rural communities and their libraries.
- Digitize and preserve materials that are unique to a local community.
- Provide sufficient content and services that address the civic needs and interests of local communities (for example, localism).
- Purchase and showcase materials that represent the cultural diversity of local communities.
- Identify hidden or unique collections.
- Seek out and maintain unique local materials, especially ephemera and other primary resources.

- Cultivate community awareness to support local collections.
- Build partnerships with individual and institutional donors, private foundations, and local businesses.
- Conduct public awareness campaigns focusing on subject content interests and the potential loss of vital local stories and histories.
- Create a plan for policy statements that describe the scope of collecting, materials identifying, cultivating sources, staffing, and sustainability.
- Provide administrative support at the highest level for unique and local collections.
- Retain original items that are reformatted or archivally copied.
- Build special collections that include alternative, independent, and small press media materials.
- Prioritize the preservation of materials from alternative media producers.
- Reformat materials to increase access to local history, including oral history.
- Create analog preservation copies to ensure longevity.
- Work to preserve access to materials that cannot be regularly circulated or viewed for reasons of age, scarcity, or other reasons.
- Create copies to assure that materials are accessible by the public; preserve originals in an archive.

Knowledge Creation

In the digital age, the roles of libraries have changed to embrace new opportunities for facilitating and shaping content, communication, and collaboration. Today, librarians compile and distribute data; create Web sites and blogs; select and reformat publications; add descriptive metadata; digitize unpublished materials; provide new tools for the collection, dissemination, and preservation of knowledge; and foster creative production by members of their communities. As libraries venture from their more traditional role as stewards of collections into the realm of creating and sustaining knowledge, they are facilitating the creation of dynamic publications, incorporating peer reviews, commentary, and dialogue. Many communities are seeing a burgeoning of local user content online. Others are developing new means to control information through such vehicles as institutional repositories and serving as formal distributors of publications. Particularly noteworthy initiatives include the MIT Library's D-Space, the University of California's California Digital Library, and Stanford University Libraries' HighWire Press. These emerging roles position the library as catalyst working in collaboration with other stakeholders on the processes of knowledge creation. Libraries can take advantage of this new realm of content production by making available a more diverse array of resources that includes local materials.

Actions:

- Encourage peer production of information.
- Use Creative Commons or other less restrictive licenses that encourage open access to information.
- Establish digital repositories for institutional, subject, and individual community and other information.
- Collect, organize, and publish unique community information.
- Partner with organizations to create, process, distribute, and preserve content.
- Adopt tools to create dynamic information resources.
- Provide technology and technology-based forums that foster community access, conversation, and learning.
- Establish social networking accounts to foster broader participation online communities.

II. Library Services and Programs

Libraries play a vital role in promoting and providing access to information for all individuals and groups within a community. As public institutions, libraries not only have the capacity, but also the responsibility, to eliminate the economic, language, physical, and educational barriers that may prevent individuals from accessing the information they need. These barriers (and others) are diminished when libraries create free, public spaces—physical and virtual—where individuals can locate, read, view, and utilize information central to their lives. Libraries also are in a unique position to acquire and make available resources that reflect the often unheard voices of underserved populations. A library's responsibility to build collections that present a diversity of viewpoints and perspectives, in fact, necessitates a proactive approach to identifying and acquiring sources of information that may fall outside mainstream media outlets. Libraries also need to ensure that users have access to the growing body of digital resources at no cost, an important role for libraries that counteracts increasing trends toward fee-based information sources marketed to the public in growing numbers. Library buildings also serve a valuable community function by providing free space for groups to meet, learn, and use the library's resources. In many cases, the library is the only or primary agency that is both affordable and relevant to segments of the user community with special or unique needs. To fulfill this essential role, a library needs to maintain a high level of engagement with the various user populations within its constituency.

As stewards of the human record, the library also should collaborate with individuals, groups, and organizations to assure that materials created by individuals from underserved populations within a community are preserved for future generations. Libraries, more than most other community institutions, have the facilities, equipment, and knowledge to fulfill this stewardship role for the community.

Actions:

- Collaborate with small, independent, and alternative media outlets and other cultural institutions in the com-

munity (for example, PEG and PBS stations, college and independent radio, museums).
- Serve as an information commons where local citizens can exchange, share, and understand each others' unique cultural viewpoints.
- Showcase alternative producers at programs, book parties, and lectures.
- Include small, independent, and alternative producers in bibliographies, exhibits, and other public endeavors.
- Collaborate with local teachers, agencies, and groups (such as book or parenting groups) to discover their needs and suggestions and to encourage them to include in their reading and viewing lists, curricula, and programs the most relevant nonmainstream titles your library has or can collect.
- Utilize low-power radio to broadcast events at the library.
- Provide opportunities for the public to deliberate about issues of common concern.
- Work with the library's outreach services, programming, and marketing departments to ensure awareness and coordination of available resources among the targeted groups.
- Create feedback mechanisms, such as focus groups or citizens' advisory panels, to help meet changing needs.
- Train staff to be aware of and sensitive to disabilities that affect many citizens.
- Reach out to local providers of services to individuals with disabilities.
- Meet with leaders of local ethnic groups to build relationships, encourage awareness of and use of the library, and gain understanding of the groups' needs in terms of the library.
- Hire library staff with knowledge and language skills relevant to the population, and who have a commitment to serving the population.
- Understand and respond to the fact that different neighborhoods may vary significantly in their ethnic composition, and that this composition is dynamic over time.

Reference and User Services

Libraries increasingly aim to be as self-service as possible, with the idea that staff time can be saved for more essential duties. Reference and user services are what we are saving that time for. Without a librarian who knows the full spectrum of diverse resources and how they interrelate, without a librarian to conduct an expert reference interview to help users understand how to fill their needs, without a librarian to find resources to fill needs in a timely fashion at the right intellectual level, much of the library collection may go unused, and many user needs may go unfilled. If libraries are to help users access a diversity of resources, reference services need to be excellent and readily available.

Actions:
- Provide service to users through a variety of new technological means, and continue to support traditional face-to-face and telephone reference and readers' advisory services, without which many users will not find what they want and need.
- Support ongoing training to improve the librarian's ability to know and teach others to utilize the full spectrum of library resources—print, AV, and electronic.
- Proactively seek to recognize when a user—or a class of users—might need help, and offer to meet them at their own level.
- Provide excellent 24/7 reference services, especially when the library is closed, recognizing their limitations. Because they are often done remotely, they are usually limited to Web-accessible info and may overlook parts of the local library's physical collection, its Web site, and the expertise of its local librarians.

Library Instruction and Twenty-First-Century Literacy

Librarians in all type of libraries now teach twenty-first-century skills—including information, media, visual, civic, and cultural literacy—in order to help their constituents make effective use of information in all formats and think critically about content and its delivery across old and new media. Today, this teaching role is essential, as people face a bewildering world of information overload without the intervention of a mediator such as a librarian. Standards developed by both school and academic librarians stress critical thinking as well as awareness of the economic, legal, ethical, and social issues surrounding the use of information. Programs incorporating these standards can raise awareness about the value of access to a diversity of ideas. With such diverse communities, librarians can best serve the full range of training needs by responding to different learning styles through a variety of presentation styles.

Actions:
- Incorporate a diversity of media sources into library instruction sessions when appropriate and direct users to these sources as part of the individual instruction and interview process.
- Teach media literacy and critical thinking skills as part of the library instruction program.
- Develop indicators to assess twenty-first-century skills and competencies that include measures of the public's ability to recognize the effects of diminished media diversity.
- Incorporate diverse media resources into twenty-first-century learning curricula.
- Design different presentation formats for a variety of learning styles.
- Collaborate and partner with educators and other community groups to build and promote twenty-first-century literacy skills.

- Educate library colleagues about the economic, legal, ethical, and social issues surrounding the use of information, including the impact of media consolidation on the diversity of ideas.

IV. The Library Profession As an Advocate for Change

Library use is increasing, and libraries and librarians are more necessary than ever. Nevertheless, the continued relevance of libraries is still questioned. Intense competition for public and institutional dollars makes it crucial that librarians garner public support to maintain and expand library and information programs. Libraries play a role as no other institution in our democracy, yet they are not always able to communicate that uniqueness. The challenge is to capture the public's imagination by fostering an understanding of the value of libraries and librarians to our democracy. In an age when the public sphere is under attack, librarians must stand in defense of the public's right to know and promote free expression and access to a diversity of ideas. No one else will stand up with the same conviction, with the same dedication, with the same determination to protect and promote the public's right to access a diversity of ideas.

Actions:

- Promote the library as an important source for a diversity of ideas unavailable from the mainstream media.
- Position the library as an entity that promotes the sharing of ideas.
- Observe Media Democracy Day, Freedom of Information Day, Sunshine Week, Constitution Day, Banned Books Week, and similar annual events that call attention to freedom of information and democratic participation.
- Advocate on behalf of the public's right to access public information and promote local freedom of information laws and sunshine acts.
- Encourage efforts to preserve and protect the library as a civic space that is part of a vibrant public sphere.
- Partner with organizations that advocate for alternative publishing ventures, such as the Scholarly Publishing and Academic Resources Coalition (SPARC) and The Information Access Alliance.

Library Research

There is rich academic literature on media consolidation and its impact on citizens' access to diverse information resources, but this literature lacks references to libraries. Accordingly, library scholars need to take a more active role in studying this issue. Librarians have rightly discussed media industry mergers and acquisitions and their deleterious effect on journal prices. That discussion needs to be expanded to a consideration of the impact of shrinking access to a wide variety of diverse information resources on the public's capacity to be informed citizens and participants in the democratic process.

Actions:

- Conduct studies on the impact of conglomeration and document harm to the free flow of ideas.
- Identify gaps in collections and services.
- Study the impact of user instruction programs on critical thinking and information access.
- Explore and report on ways to diversify collections and services.

Library Associations

Library associations such as ALA offer librarians and library supporters a public voice to speak out on behalf of the millions of people who use libraries every year. They provide the vehicle to assess policies, take positions, build partnerships and coalitions, and lobby policy makers and advocate for a free and open information society. ALA's structure facilitates political action by teaching members about the issues, evaluating choices, drafting principles, deliberating about alternatives, and negotiating a public stance. It also provides the public relations support to develop a unified message and reach out to the media. For decades, ALA has established itself as a credible, well-respected player in the political arena. The persistent and consistent voice of librarians working together through their professional associations can compete for and win the battle to shape the nation's information policy in the public interest. In the digital age, librarians, library workers, trustees, friends, and users in every community must speak out and lead the charge for public access to a diversity of ideas.

Actions:

- Encourage professional library associations to promote a diversity of media producers.
- Feature diverse media producers more prominently in advertising and exhibits and offer more programs about these resources at conferences.
- Mainstream discussions about small, independent, and alternative publishers and producers within ALA and other library associations.
- Sponsor programs that focus on media concentration and ways libraries can counter the effects.

Legislative Advocacy

As far back as 1919, ALA recognized the importance of participation in the political process at the national, state, and local levels. Over the past few decades, librarians have joined in a number of advocacy efforts to shape the media landscape. From children's and cable television to public broadcasting, librarians have spoken out for the public interest. In addition, they have promoted First Amendment and fair use rights, as well as information equity for all Americans. With the breakup of AT&T in 1984, ALA, eager to protect the public interest, responded by developing principles

rather than endorsing particular positions. Over the next few decades, ALA served as a major voice for a free and open information society, where a diversity of ideas was available to all. Although the Telecommunications Act of 1996 settled some of the debate over media ownership, the law opened up new battlegrounds for librarians, including controversies over bridging the digital divide and restricting Internet access. Subsequently, the law's emphasis on deregulation has resulted in even greater consolidation of the media industry, prompting public concern that the Federal Communications Commission's (FCC) proposed 2003 rules would reduce media competition. In June 2003, ALA Council unanimously passed a resolution expressing opposition to these changes in media rules, taking a firm public stand about the impact of media monopolies on access to a diversity of ideas. ALA and other library associations have also spoken out in opposition to mergers of scholarly publishers.

Actions:

- Oppose changes in media ownership rules that encourage further concentration of the media.
- Oppose copyright laws, regulations, rules, and practices that limit the public's access rights.
- Support policies that strengthen and expand the public's information rights.
- Demonstrate how libraries are affected by media consolidation and their importance to countering its impact.
- Support antitrust actions against attempts by large media companies, including scholarly publishers, to merge.
- Support laws and regulations that promote and preserve equitable and affordable acquisition, distribution, and transmittal costs, such as licensing fees, postal rates, cable fees, and broadband fees for small, independent, alternative, and community media.
- Focus activism on antitrust issues, court cases, and regulatory actions as well as legislation.
- Partner with groups supporting more diverse media and opposing media consolidation and other policies that restrict the public's access to information.

Intellectual Freedom Advocacy

ALA's efforts to protect and promote intellectual freedom serve as a model for and inspiration to library groups throughout the United States and abroad. Part of the reason for ALA's success is its strong organizational support for this core value. Leading these efforts is ALA's Intellectual Freedom Committee (IFC), charged with recommending actions to safeguard the rights of library users, libraries, and librarians. ALA's statements and policies help guide members in their daily work and inform leaders when they speak on the association's behalf. In addition to legislative efforts, ALA participates in litigation in support of libraries, including opposition to the Communications Decency Act and the Children's Internet Protection Act (CIPA). After ALA Council passed a resolution opposing the FCC's proposed rules about media diversity in 2003, IFC formed a subcommittee to assess the impact of media consolidation on libraries.

Actions:

- Include media consolidation as a library intellectual freedom issue.
- Educate librarians and others about the important role libraries play to ensure that communities have access to a diversity of information resources.
- Join forces with groups who are speaking out about the impact of media conglomeration on intellectual freedom and the public's right to know.
- Present the library as a public forum for diverse ideas.

References and Notes

1. While the term diversity implies difference, experts have found the concept difficult to define or measure with any precision. In Europe, media diversity generally refers to the promotion of culture (national identity) and the protection of cultural heritage. Diversity of culture, content, and sources are all presented as aspects of media pluralism. Internal pluralism aims at ensuring that a wide range of values find expression within a single media organization. External pluralism aims at ensuring the maintenance of many media organizations and sources, each expressing a particular viewpoint. Political pluralism focuses on a range of political views represented in the media, while cultural pluralism is about the need to represent a variety of cultures that reflect the diversity within a society. Media pluralism is safeguarded through European policy instruments that regulate licensing, ownership, access, and programming. Not so in the United States, where First Amendment protections preclude intervention with respect to content. Instead, policy makers grapple with a regulatory regime that aims toward media diversity, but relies primarily on the marketplace for direction. For several years, the Federal Communication Commission (FCC) has convened a Federal Advisory Committee on Diversity in Communications in the Digital Age to recommend policies related to ownership and other issues. As part of this effort, the FCC has identified five types of diversity: viewpoint diversity, outlet diversity, program diversity, source diversity, and female/minority ownership. For libraries, it is useful to consider these various approaches to defining and measuring diversity when reviewing policies and practices. ALA's "Diversity in Collection Development: An Interpretation of the Library Bill of Rights" (Adopted 1982, amended 1990, and reviewed 2005) focuses primarily on viewpoint diversity. Many other ALA policies and practices, however, deal with all of these notions.
2. Barbara Jones, *Libraries, Access and Intellectual Freedom* (Chicago: ALA, 1999) 12–13.

3. *Associated Press v. United States,* 326 U.S. 1, 20 (1945).
4. Chris Anderson, *The Long Tail* (New York: Hyperion, 2006).

Glossary

Creative Commons (CC)—A nonprofit organization devoted to expanding the range of creative work available to others to share legally.

Digital repository—An organization that has responsibility for the long-term maintenance of digital resources as well as for making them available to communities agreed on by the depositor and the repository.

Folksonomy—Internet-based information retrieval method consisting of collaboratively created labels that catalog such content as Web pages, online photographs, and Web links. A folksonomic approach to metadata creation enables the personal classification (or tagging) of digital resources.

Institutional repository—A digital collection capturing and preserving the intellectual output of a single or multi-institutional community.

Open access—Resources that are openly available to users with no requirements for authentication or payment.

Open source—A program in which the source code is available to the general public for use or modification from its original design free of charge.

Peer review—The process by which scholarly articles are chosen to be included in a refereed journal. An editorial board consisting of experts in the author's field review the article and decide if it is authoritative enough for publication.

Social bookmarking—The practice of saving bookmarks to a public Web site and tagging them with keywords.

User-centered catalog—An online catalog that is born and assumes its form while it is consulted, and whose form is conditioned, if not determined, by its users. ☐

(IFC Report . . . from page 175)

Association, Black Caucus of the American Library Association, Chinese American Librarians Association, REFORMA, and Sociedad de Bibliocarios de Puerto Rico to appoint representatives to the committee. Zhuo Wang has been appointed the Chinese American Librarians Association's representative to the committee.

Festschrift to Honor Gordon M. Conable

At the 2005 Midwinter Meeting, IFRT, the Freedom to Read Foundation (FTRF), and the IFC began work on a Festschrift to honor Gordon M. Conable. ALA editions will publish it in 2008. All proceeds will be donated to the Gordon F. Conable Fund of the Freedom to Read Foundation.

New Projects

The Many Faces of Privacy: A Conversation

At the 2006 Annual Conference, Council adopted the "Resolution on National Discussion on Privacy," which urged IFC to collaborate with other ALA units toward a national conversation about privacy as an American value. To implement this resolution, ALA will sponsor a national conference on privacy, tentatively titled "The Many Faces of Privacy: A Conversation."

Planning began at IFC's 2007 spring meeting. Another planning meeting is scheduled to take place by the end of this fiscal year that will bring together a wide variety of organizations with a demonstrated interest in promoting privacy. These include such groups as the Electronic Privacy Information Center (EPIC), the Center for Democracy and Technology (CDT), the Electronic Frontier Foundation (EFF), and the Privacy Clearinghouse. Also to be invited are representatives from other professions with privacy concerns, such as bankers, medical personnel, publishers, lawyers, newspaper editors, and scientists.

It is anticipated that it will take a year or more to organize the conference, focus on the issues, raise funds, obtain nationally recognized speakers, and so forth. The target date for the conference, which likely will be held in Chicago, is fall 2008.

Because of its scope, the conference should draw a great deal of media coverage, which should encourage a renewed interest in privacy by the American public. To help bolster this interest, ALA will develop tools and other resources to promote grassroots efforts to support ongoing discussions and actions to protect our right to privacy, including tool kits that will be used to educate the public on privacy issues.

Preparing for the Eighth Edition of the Intellectual Freedom Manual

The first edition of the *Intellectual Freedom Manual* was published in 1973. It is—and continues to be—an attempt to bring together in one place all intellectual freedom–related policies and procedures. In the early editions of the manual, there was not a great need to constantly update. Now, to keep up to date on such topics as media concentration, privacy, RFID, and online social networking, less time elapses between editions. Indeed, the fifth edition was published nine years ago, the sixth five-and-a-half years ago, and the seventh just eighteen months ago. It is anticipated the eighth edition will be available in 2009.

In the preparation of each edition of the manual, IFC reviews all intellectual freedom policies, guidelines, and statements. The review began at this conference and will continue throughout 2008.

Age, Grade, Reading Level, and Computerized Reading Programs

IFC discussed Accelerated Reader and other computer-based reading recall and comprehension programs. Although these programs primarily are used in school settings, some public libraries are adopting these programs, even to the point of shelving books according to their criteria, which base reading levels on vocabulary usage and difficulty, not subject content. These shelving schemes amount to labeling.

To help explain the Interpretation on Labels and Rating Systems, in 2006 the committee developed "Questions and Answers on Labels and Rating Systems," which states:

> While knowing the reading level of a book can assist library users, organizing a library via these labels can pose a psychological barrier for patrons who do not know their reading level. Many will feel that they should not utilize those resources. Patrons who do know their reading level may feel compelled to only select resources from their reading level. This will result in patrons not utilizing the full scope of the library collection.

In addition, the committee contends these programs, by allowing children to choose only books within his or her reading level, have a deleterious effect on children's curiosity to read, their privacy, and their self-esteem. The effect on some children may be discouraging them from reading altogether. As such, these programs violate the principles set forth in the Library Bill of Rights.

As part of the review of all intellectual freedom policies, in preparation of the eighth edition of the *Intellectual Freedom Manual,* the IFC will draft a new interpretation of the Library Bill of Rights to address these issues. The committee will work with AASL and other appropriate units.

Continuing Projects

Contemporary Intellectual Freedom Series

The majority of printed works addressing intellectual freedom and privacy issues in the library tend to be academic or compilations of policies and articles such as the *Intellectual Freedom Manual.* While these references make excellent resources for the academic, the professional librarian, or the student conducting in-depth research, few works provide practical, easy-to-access guidance on intellectual freedom and privacy issues to a broader audience that can include front-line librarians, library workers, LIS students, library volunteers, and members of the general public.

The three publications currently being written by Candace Morgan, Barbara Jones, and Pat Scales will comprise a series containing an introduction to intellectual freedom and more specific materials addressing the practical application of intellectual freedom principles in public, academic, and school libraries. Each publication will discuss intellectual freedom concepts via a series of case studies that will both illustrate and teach a particular intellectual freedom or privacy concept. The reader should be able to jump into the work at any point or find a case study to address a current problem or issue of concern.

Each case study will describe a set of facts, followed by a discussion of the applicable intellectual freedom principles. The overall discussion will employ text, Q&As, sidebars, hot tips, and other creative means to provide information useful to the front-line library worker or the LIS student seeking an introduction to intellectual freedom.

ALA Editions will publish the series in 2008.

Law for Librarians

A major Ford Foundation grant is supporting two OIF projects—Lawyers for Libraries trainings (see immediately below) and Law for Librarians. In the latter case, the grant enabled OIF to sponsor a three-day Train the Trainers session in early April 2006 in Chicago for all state chapter IFC chairs. State library directors and ALA chapter executive directors also were invited—and many attended. Each chapter IFC attendee committed to conducting two similar Law for Librarians trainings over the next two years. The training focused on litigation and laws that affect intellectual freedom in libraries; attendees also received instruction on putting together trainings so they can fulfill their commitment to organize at least two in their home states on legal topics affecting libraries. Evaluations indicated the trainings were very well received, and enthusiasm was high for continuing the work on the state level.

Law for Librarians continues to bear fruit, as attendees fulfill their pledges to put on at least two similar trainings in their states. OIF established a wiki through which attendees post information about those activities. More than forty states have placed information on the wiki. OIF helped the Maryland and Tennessee library associations hold preconferences, and will be working with other state chapters to provide them with related programs.

Lawyers for Libraries

Lawyers for Libraries, an ongoing OIF project, is designed to build a nationwide network of attorneys committed to the defense of the First Amendment freedom to read and the application of constitutional law to library policies, principles, and problems.

National Lawyers for Libraries training institutes were held in 1997 and 1998. Regional trainings have been held in Washington, D.C., Chicago, and San Francisco in 2003; in Dallas and Boston in 2004; in Atlanta and Seattle in 2005; and in Houston at the Texas Library Association and Columbus Training Institute, Columbus, Ohio, in 2006. The Mid-Atlantic Regional Lawyers for Libraries Training Institute was held in Philadelphia, May 17, 2007.

Topics addressed at the trainings include the USA PATRIOT Act, Internet filtering, the library as a public forum, meeting room and display area policies, and how to defend against censorship of library materials.

As OIF continues to sponsor institutes, more and more attorneys are learning about the intricacies of First Amendment law as applied to libraries, and the country's library users can be more secure knowing that their rights will continue to be vigorously protected.

The next Lawyers for Libraries is planned for November 8, 2007, in Denver, Colorado, as a preconference to the Colorado Association of Libraries annual conference. Additional information on the event will be available soon.

If you are interested in receiving information about upcoming Lawyers for Libraries events, please contact the Office for Intellectual Freedom at lawyers@ala.org or 1-800-545-2433, ext. 4226.

LeRoy C. Merritt Humanitarian Fund

Founded in 1970, the LeRoy C. Merritt Humanitarian Fund is stronger than ever, and continues to provide financial assistance to librarians who have been harmed in their jobs due to discrimination or their defense of intellectual freedom.

Visit www.merrittfund.org to learn more about the Merritt Fund, its thirty-seven-year history, the man after whom it was named, and how it has been a lifeline to librarians in need. If you or someone you know has need for assistance from the Merritt Fund, please have them apply.

If you would like to help build the Merritt Fund into a greater resource, please consider donating. The Merritt Fund is proud to announce the ability to accept credit card donations online. Fill out the secure donor form (www.merrittfund.org/donations) and use your Visa, MasterCard, American Express, or Discover Card. You also can donate by sending a check payable to LeRoy C. Merritt Humanitarian Fund to 50 E. Huron St., Chicago, IL 60611.

2007 Banned Books Week

ALA's annual celebration of the freedom to read—Banned Books Week (BBW)—begins September 29 and continues through October 6, 2007; it marks BBW's twenty-sixth year. BBW once again will highlight that intellectual freedom is a personal and common responsibility in a democratic society.

OIF, the McCormick Tribune Freedom Museum, and the Newberry Library are holding a Banned Books Week Read-Out! in Pioneer Plaza at Michigan Ave. and the Chicago River, on Saturday, September 29, from 1–4 P.M. Local Chicago celebrities will join several acclaimed authors to read passages from their favorite banned and challenged books. Authors scheduled to appear include Chris Crutcher, Carolyn Mackler, and Robie Harris.

BBW posters, bookmarks, t-shirts, and other related products—such as the new I Read Banned Books tote bag—are being marketed by ALA Graphics (http://tinyurl.com/qrqb4). This year's theme involves pirates; posters use such tag lines as "Treasure Your Freedom to Read" and "Get Hooked on a Banned Book."

More information on Banned Books Week can be found at www.ala.org/bbooks.

Action

For those of you who were in New Orleans, you are aware that the Connecticut John Does—George Christian, Peter Chase, Barbara Bailey, and Janet Nocek—were announced for the first time following the lifting of the gag order that had accompanied the National Security Letter (NSL) served on the Library Connection.

After having been gagged for almost a year, our John Does have been traveling throughout the country this year talking to library and related audiences about their experiences. In doing so, they heard from concerned citizens at every point in the United States about the need to add safeguards to Section 505 of the USA PATRIOT Act protecting the civil rights that make America unique.

After the presentation of the John Swan Memorial Lecture, sponsored by the Vermont Library Association, several of our members began drafting a resolution, based on IFC's resolution passed in New Orleans by this Council, to add those necessary safeguards to Section 505. In doing so, they tracked closely the wording in Jane Harman's (D-CA) bill, currently in committee in the U.S. House of Representatives.

When IFC completed its first draft, we shared it with the Committee on Legislation, which assisted IFC in refining and augmenting the resolution attached to this report.

The IFC and the COL urge Council to adopt this resolution—cosponsored by both committees—to protect the right of everyone to equally and equitably access, hold, and disseminate information, and move the adoption of "Resolution on the Use and Abuse of National Security Letters." The RESOLVED clauses read as follows:

RESOLVED, That the American Library Association condemn the use of National Security Letters to obtain library records; and, be it further

RESOLVED, That the American Library Association urge Congress to pursue legislative reforms in order to provide adequate protection for each library user's Constitutional right to be free from unwarranted and unjustified government surveillance, including judicial oversight of National Security Letters (NSLs) requiring a showing of individualized suspicion and demonstrating a factual connection between the individual whose records are sought by the FBI and an actual investigation; elimination of the automatic and permanent imposition of a nondisclosure or "gag" order whenever an NSL is served on an individual or institution;

allowing recipients of NSLs to receive meaningful judicial review of a challenge to their NSL without deferring to the government's claims; increased oversight by Congress and the Office of the Inspector General of the U.S. Department of Justice over NSLs and FBI activities that implicate the First Amendment; and providing for the management, handling, dissemination and destruction of personally identifiable information obtained through NSLs; and, be it further

RESOLVED, That the ALA communicate this resolution to Congress, ALA members, and state chapters; and that ALA urge its members, state chapters, and all library advocates to ask Congress to restore civil liberties and correct the abuse and misuse of National Security Letters.

This resolution was endorsed in principle by the Intellectual Freedom Round Table.

The chair would like to thank Molly Fogarty, Chair of the Committee on Legislation, and COL's Privacy Subcommittee for their assistance on this important resolution. This is truly an important collaborative effort between our two committees.

In closing, the Intellectual Freedom Committee thanks the Division and Chapter Intellectual Freedom Committees, the Intellectual Freedom Round Table, the unit and affiliate liaisons, and the OIF staff for their commitment, assistance, and hard work. □

(ALA Urges Congress. . . from page 173)

Does"—were presented with the ALA Paul Howard Award for Courage at the conference.

Among the legislative reforms ALA urged are:

- requiring through judicial oversight a showing of individualized suspicion and demonstrating a factual connection between the individual whose records are sought by the FBI and an actual investigation;
- eliminating the automatic and permanent imposition of a nondisclosure or gag order whenever an NSL is served on an individual or institution;
- allowing recipients of NSLs to receive meaningful judicial review of a challenge to their NSL without deferring to the government's claims;
- increasing oversight by Congress and the Office of the Inspector General of the U.S. Department of Justice over NSLs and FBI activities that implicate the First Amendment; and
- providing for the management, handling, dissemination, and destruction of personally identifiable information obtained through NSLs.

ALA has sent letters communicating the resolution to the Offices of the President and Vice President as well as to every member of Congress. ALA further asked its members, state chapters, and all library advocates to ask Congress to restore civil liberties and correct the abuse and misuse of NSLs.

Two of the Connecticut librarians described what it was like to be slapped with an FBI national security letter and accompanying gag order in a well-attended session at the ALA Conference.

Peter Chase and Barbara Bailey, librarians, respectively, in Plainville and Glostonbury, Connecticut, received an NSL to turn over computer records from their consortium on July 13, 2005. Unlike a suspected thousands of other people around the country, Chase, Bailey, and two of their colleagues refused to comply, convinced that the feds had no right to intrude on anyone's privacy without a court order (NSLs don't require a judge's approval). That's when things turned ugly.

The four librarians under the gag order weren't allowed to talk to each other by phone. So they e-mailed. Later, they weren't allowed to e-mail. After the ACLU took on the case and it went to court in Bridgeport, the librarians were not allowed to attend their own hearing. Instead, they had to watch it on closed circuit TV from a locked courtroom in Hartford, sixty miles away. "Our presence in the courtroom was declared a threat to national security," Chase said.

Forced to make information public as the case moved forward, the government resorted to one of its favorite tactics: releasing heavily redacted versions of documents while exposing anyone who didn't cooperate with them. In this case, they named Chase, despite the fact that he was legally compelled to keep his own identity secret.

Then the phone started ringing. Reporters wanted information. One day, the AP called Chase's house and got his son, Sam, on the phone. When Chase got home, he took one look at his son's face. "I could tell something was very wrong," he said. Sam told him the AP had called saying that Chase was being investigated by the FBI. "What's going on?" Sam asked his father. Chase couldn't tell him. For months, he worried about what his son must have been thinking.

As the case moved forward, the librarians had to resort to regular duplicity with co-workers and family—mysteriously disappearing from work without an explanation, secretly convening in subway stations, dancing around the truth for months. The ACLU even advised Chase to move to a safehouse.

After the Bridgeport court ruled that the librarians' constitutional rights had been violated, the government appealed the decision to U.S. District Court in Manhattan. Around the same time, the spin machine kicked into overdrive. Rep. Jim Sensenbrenner (R-WI) wrote an op-ed in *USA Today* that declared: "Zero. That's the number of substantiated USA PATRIOT Act civil liberties violations. Extensive congressional oversight found no violations. Six reports by the Justice Department's independent inspector

general, who is required to solicit and investigate any allegations of abuse, found no violations."

Once President Bush reauthorized the PATRIOT Act, the FBI lifted the librarians' gag order. "By withdrawing the gag order before the court had made a decision, they withdrew the case from scrutiny," Chase said. This eliminated the possibility that the NSL provisions would be struck down.

Today, the Connecticut librarians are the only ones who can talk about life with an NSL gag, despite the likelihood that there are hundreds, if not thousands, of other similar stories out there. "Everyone else who would speak about is subject to a five-year prison term," Chase said. The prison term for violating the gag order was added to the reauthorized PATRIOT Act. Reported in: ALA Press Release; Wired blog, June 24. □

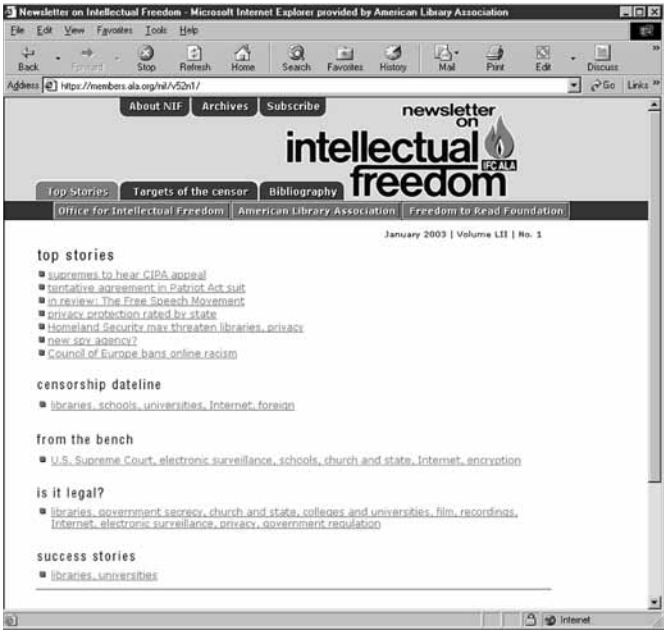
log on to

newsletter on intellectual freedom *online*

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

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

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



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

intellectual freedom bibliography

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