newsletter on intellectual freedom

IFC ALA

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FBI misused PATRIOT act, audit says

Poorly trained FBI agents underreported the number of times the agency issued National Security Letters (NSLs) to obtain financial and telecommunications records in antiterrorism investigations, neglected to provide proper justification for their use, and failed to put in place record-keeping procedures to ensure civil liberties were protected, according to a Justice Department audit released March 9.

FBI agents also repeatedly provided inaccurate information to win secret court approval of surveillance warrants in terrorism and espionage cases, prompting officials to tighten controls on the way the bureau uses that powerful anti-terrorism tool, according to Justice Department and FBI officials

The NSL investigation, conducted by the department's Office of the Inspector General, prompted congressional leaders to promise a review of the FBI's expanded powers under the USA PATRIOT Act and forced FBI Director Robert S. Mueller to acknowledge that the agency did not have policies in place to handle its new authorities.

"I am to be held accountable," Mueller said, adding that he should have set up an audit system, internal controls, and adequate training and oversight to resolve "confusion and uncertainty" among field agents over the use of NSLs.

"We believe the improper or illegal uses we found involve serious misuses of National Security Letter authorities," Inspector General Glenn A. Fine said in releasing the report. The audit revealed that as many as 22 percent of NSL requests issued in 2003–2005 were not recorded in the official NSL tracking database maintained by the FBI's Office of the General Counsel. The number of NSL requests in 2005 was approximately 47,000, up from 39,000 in 2003; more than half of the requests in 2004–2005 targeted U.S. citizens.

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Kenton L. Oliver, Chair

in this issue

targets of the censor

books

periodicals

theater

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Newbery Medal winner provokes controversy

A thread on a school library discussion list about the 2007 Newbery Award winner, *The Higher Power of Lucky,* catapulted the practice of school librarianship onto the front page of the *New York Times*. As of February 23, it also had propelled the novel into the top forty on Amazon.com's bestseller list—demonstrating that, for reading material at least, there is no such thing as bad publicity.

The controversy, which arose in the biblioblogosphere over a thread on LM_NET over the children's novel's use of the word "scrotum," escalated after *Publishers Weekly* ran a story about the debate. In the novel's page-one anecdote, ten-year-old title character Lucky overhears a meeting of a twelve-step addiction-recovery program at which a man recounts how his dog got bitten by a rattlesnake. *Publisher's Weekly* told how LM_NET subscriber and teacher/librarian Dana Nilsson of Sunnyside Elementary School in Durango, Colorado, had reported to fellow list members that twenty-four out of twenty-five respondents to her query agreed with her that the use of the word was age-inappropriate and that their schools would not buy the book.

That same day, *Publisher's Weekly* published *Lucky* author Susan Patron's response. A juvenile-materials collection development manager for Los Angeles Public Library, Patron said she "would not talk down" to her readers, adding, "To figure out the world, children have to unscramble a mishmash of secrets, clues, overheard tidbits, half-truths, out-of-context information, and their own observations. The lucky ones . . . have access to parents or teachers or librarians who will answer their questions."

By mid-February, media specialists were reacting to headlines published as far away as Australia that proclaimed the prudishness of U.S. school librarians, apparently basing the assertion on the erroneous *New York Times* claim that "some shocked school librarians . . . have pledged to ban the book from elementary schools." Nilsson, among others, were quick to emphasize that the media had misrepresented their professional judgment, and that they would probably buy *Lucky* for their collections because of its Newbery imprimatur.

Also weighing in were Kathleen T. Horning and Cyndi Phillip, the respective presidents of two American Library Association divisions, the American Association for School Librarians and the Association for Library Service to Children. They issued a joint statement February 22 affirming the profession's commitment to "inclusion rather than exclusion" and praising *The Higher Power of Lucky* as "a gently humorous character study, as well as a blueprint for a self-examined life." Reported in: *American Libraries* online, February 23. □

Sports Illustrated decides libraries don't need swimsuit issue

Librarians on Publib and other discussion lists discovered in the first week of March that none of them had received the February 14 swimsuit issue of *Sports Illustrated*. Inquiries to Time Warner eventually resulted in a statement from spokesman Rick McCabe that the company had withheld shipment of that issue to libraries and schools because for years the magazine had received complaints that the issue was too risqué.

"In the past, we have gotten lots of feedback from parents, teachers, and librarians about the content possibly not being appropriate for libraries," McCabe said.

A spokesman for *Sports Illustrated,* a Time Warner property, confirmed that the issue had been withheld from about 21,000 subscribers identified as "libraries or classrooms." Many of the subscribers affected were libraries at universities and other educational institutions. None of the affected subscribers had been informed of the decision to withhold the issue.

Many librarians were first alerted to the missing issue by messages posted to the Serials electronic mailing list. After reading one such post, Kelly Joyce, the reference and periodicals librarian for Hanover College in Indiana, verified that her library had not received the issue.

"I thought this was odd," Joyce said, adding that she had never fielded any patron complaints about the swimsuit issue. "I'm certainly not in favor of censoring anything."

When she contacted her *Sports Illustrated* customer service representatives, Joyce was first told that there were no more copies of the issue available, before finding out that her library had been flagged as a "public institution" and as such would not receive the issue. A second representative said that the library's subscription would be extended by two weeks.

Lynne Weaver, serials coordinator at Randolph Macon Woman's College in Lynchburg, Virginia, said that "everybody's furious" that the school had no say on whether it would receive the issue. "If for any reason we would choose not to get an issue, that's up to us," she said.

On March 12, Leslie Burger, president of the American Library Association, issued the following statement:

"The policy decision by the publishers of *Sports Illustrated* to selectively deny this year's 'swimsuit issue' to some of its paid subscribers is outrageous—patronizing and paternalistic in the extreme. To read (or not to read) a published issue of the magazine is a decision that belongs solely to subscribers, and in the case of institutional subscribers such as libraries, to the individual patrons of that library.

"Limiting access to the *Sports Illustrated* swimsuit issue in response to alleged, anonymous, and amorphous

expressions of concern is an infringement on the First Amendment rights of library users and an unwarranted attempt to censor the materials available in our nation's libraries.

"Not all library materials appeal to all library users, but an essential component of living in a democracy is respect for the right of individuals to choose reading materials suitable for themselves and their families.

"We hope the publishers of *Sports Illustrated* will take another look at this ill-advised decision and send the issue to all of its institutional subscribers without delay."

The Sports Illustrated Customer Service department said in a March 8 posting on the Serialst discussion list that subscriptions to libraries and schools were automatically extended by one issue, but that the swimsuit issue could be requested by calling 1-800-528-5000 or visiting the magazine's Web site.

According to McCabe, the decision to withhold the swimsuit issue was made independently of the magazine's senior management, by a group that was also involved in removing alcohol- or tobacco-related advertising from issues for classrooms and other subscribers who requested such alternate copies. He declined to further identify the group, but said that recent complaints about the swimsuit issue's content from teachers and parents also were a factor.

Librarians and their patrons won't have to worry about missing the latest in swimsuit fashions next year. The decision to withhold the issue was "a mistake that shouldn't have been made," McCabe said. "Certainly it's not something we're going to do again." Reported in: *American Libraries* Online, March 9; *New York Times*, March 12. □

ALA President testifies on EPA library closings

On February 6, ALA President Leslie Burger testified before the Senate Committee on Environment and Public Works on the issue of EPA libraries.

The following is the text of her testimony:

Chairman Boxer, Senator Inhofe, and Members of the Committee, thank you for inviting me today to speak on behalf of the American Library Association (ALA). I sincerely appreciate the opportunity to comment on the closure of libraries in the EPA network during this oversight hearing.

My name is Leslie Burger, and I am director of the Princeton (N.J.) Public Library. I am also the President of the American Library Association, the oldest and largest library association in the world with some 66,000 members, primarily school, public, academic, and some special librarians, but also trustees, publishers, and Friends of libraries. The association provides leadership for the development, promotion, and improvement of library and information services and the profession of librarianship to enhance learning and ensure access to information for all.

I am also testifying on behalf of the Association of Research Libraries (ARL) and the American Association of Law Libraries (AALL). ARL is a North American association representing 123 research libraries at comprehensive, research-extensive institutions that share similar research missions, aspirations, and achievements. AALL is a nonprofit educational organization with over 5,000 members nationwide.

I would like to talk today about two things: First, the vital importance of access to scientific, environmental, legal, and other government information for EPA employees and the American public; second, how the recent closures of several regional libraries, the Prevention, Pesticides & Toxic Substances (OPPTS) and headquarters libraries in Washington, D.C., as well as reduced access in other EPA library locations, is restricting access to important information about the environment in at least thirty-one states.

Given the library community's mission to promote and foster the public's access to information, it should come as no surprise that ALA—along with ARL and AALL—finds these closures troublesome. The closing of these libraries initially took place under the guise of a proposed $2 million budget cut—suggested by the EPA and included in President Bush's budget proposal for Fiscal Year (FY) 2007. Though recently, the EPA has backed away from the financial contention, instead casting the closures as a plan to digitize library collections (or convert library collections to digital formats) to reach a "broader audience" in providing access to these materials, as EPA spokespeople mentioned in a teleconference last December, but many scientists, EPA staff, and librarians continue to dispute this contention.

Is EPA's library plan based on the end users' needs? Apparently not. Our sources tell us that there has been no outreach to the EPA library user community—the thousands of scientists, researchers, and attorneys that use these resources on a daily basis as well as members of the public who have benefited greatly from access to these unique collections. There has been a lot of talk about getting information to a "broader audience," but how do the steps being taken by EPA speak to that effort? ALA doesn't see what's being done as connected to users' needs in any way.

Despite the fact that Congress hasn't passed a FY 2007 budget, EPA has already begun closing libraries and restricting public access to many of the libraries that are still open. Thus far, we have seen the closure of three regional libraries—in Chicago, Dallas, and Kansas City—OPPTS and headquarters libraries in Washington, D.C. Also, we have just learned that in the Region 4 library in Atlanta, the

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ALA, First Amendment groups condemn government censorship of science about global warming

On January 30, the House of Representatives Committee on Oversight and Government Reform, chaired by Rep. Henry Waxman (D-CA), conducted a hearing on the censorship of government climate scientists. Among the issues the committee addressed was the suppression of federal scientists' speech and writing, the distortion and suppression of research results, and retaliation against those who protest these acts.

In response to the hearing, seven prominent First Amendment organizations, including the American Library Association, American Association of University Professors, American Booksellers Foundation for Free Expression, American Civil Liberties Union, Association of American Publishers, National Center for Science Education, National Coalition Against Censorship, PEN American Center, and People for the American Way issued a statement commenting on the First Amendment concerns raised by this form of censorship.

The statement warns of the consequences of suppression or distortion of information that is essential to sound public policy and government accountability and applauds "the House of Representatives Committee on Oversight and Government Reform and Rep. Henry Waxman (D-CA) on their efforts to inform the public about this critical issue and look forward to their continuing oversight. The testimony provided at the hearing strongly supports the Committee's continued vigilance to ensure that federal policy is informed by the highest quality of scientific information and that federal officials respect not just the letter but the spirit of the Constitution by encouraging free and open debate on matters of public concern."

The statement was organized by National Coalition Against Censorship, which has examined the constitutional ramifications of censorship of science to serve political objectives.

Following is the full text of the statement:

Introduction

A hearing held on January 30, 2007, by the House of Representatives Committee on Oversight and Government Reform revealed a widespread pattern of political interference in the operations of federal scientific activities, including censorship of federal scientists' speech and writing, the distortion and suppression of research results, and retaliation against those who protest these acts. These charges raise profoundly important questions about the basis for public policies that rely on sound science, the government's respect for fundamental constitutional rights and privileges, and the effective operation of our democracy.

The Integrity of Science Is at Stake

Censorship of science is deeply troubling on many levels. At the most basic, it affronts the fundamental premises of the scientific method. Science is not static. It constantly questions, borrows from, builds on, and adds to existing knowledge. Its basic tools include formulating and testing hypotheses, documentation and replication of results, peer review, and publication. For science to advance, knowledge must be shared. Without the free exchange of ideas, science as we understand it cannot exist and progress.

The purpose of science is to produce knowledge. If science is corrupted, what flows from it is not knowledge, but something else—misinformation, propaganda, and partial-truths.

Constitutional and Historical Values Are at Stake

Censorship of science also violates two core constitutional and historical traditions: the respect for knowledge as the basis of democracy, and the commitment to the free exchange of ideas to ensure that knowledge is shared. The Founders extolled the power of education and scientific knowledge, and indeed saw the development of learning and education as a basic underpinning to democracy. Thomas Jefferson saw science as the paradigm of truth-seeking processes and described liberty as the "great parent of science." Benjamin Franklin was well-known for his belief in scientific inquiry, rational decision-making, and the need for an educated electorate. And in his 1796 farewell address, President George Washington enjoined the country to "Promote then, as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened."

These values have long been recognized by the Supreme Court:

The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment. The exigencies of the colonial period and the efforts to secure freedom from oppressive administration developed a broadened conception of these liberties as adequate to supply the public need for information and education with respect to the significant issues of the times. . . . Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period. *Thornhill* v. *Alabama*, 310 US 88, 101-2 (1940).

The rights of the general public are deeply implicated by censorship of scientific speech. Just as the Court has recognized the value of speech to the speaker, it has also

recognized the concomitant rights of the listener, who has a correlative right to receive information. See, for example *Griswold* v. *Connecticut*, 381 U.S. 479, 482 (1965): "the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge. The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read . . . and freedom of inquiry, freedom of thought, and freedom to teach . . ."

Informed Decision-Making, the Backbone of Democracy, Is at Stake

The reported acts of suppression and distortion of scientific findings violate the compact between the government and the governed that the Constitution was designed to protect. In chilling the free speech of the scientists on critical policy questions that profoundly affect the public interest and well-being, whether it is climate change or AIDS prevention, these actions hurt the people who have a right to receive accurate, reliable, and valid information about critical policy decisions. Scientists who work for the government have a right to practice their profession according to the highest professional standards, including the ability to speak freely about their research and to collaborate with other scientists. Government scientists, like other government employees, should have the same rights as other members of the community, to speak on matters of general concern. Indeed, as Stephen Hawking recently reminded us, it is the duty of scientists to speak out on such matters:

> As scientists . . we are learning how human activities and technologies are affecting climate systems in ways that may forever change life on Earth. . . . As citizens of the world, we have a duty to alert the public to the unnecessary risks that we live with every day, and to the perils we foresee if governments and societies do not take action now . . . to prevent further climate change. As we stand at the brink of . . . a period of unprecedented climate change, scientists have a special responsibility.

Conclusion

In sum, what is at stake is the integrity of government sponsored science, the ability of government scientists to adhere to the highest professional standards, their right to contribute to debates on matters of pressing public concern; and the public's access to information created by public servants that is necessary to make informed judgments and hold officials accountable for their actions.

Recognizing the speech rights of government scientists is only the first step. There are other restrictions on the flow of scientific information, including, but not limited to, restrictions on government-funded research in private universities and other institutions. Resolutions of these issues should likewise be guided by the principles noted above.

We commend Rep. Waxman and the Committee on Oversight and Government Reform and look forward to their continuing efforts to inform the public about this critical issue. The testimony strongly supports the committee's continued vigilance to ensure that federal policy is informed by the highest quality of scientific information, and that federal officials respect not just the letter but the spirit of the Constitution by encouraging free and open debate on matters of public concern.

Endorsed by:
American Association of University Professors
American Civil Liberties Union
American Library Association
American Booksellers Foundation for Free Expression
Association of American Publishers
National Center for Science Education
National Coalition Against Censorship
PEN American Center
People for the American Way □

SMU pressed to fight Bush secrecy

Archivists and historians are urging Southern Methodist University (SMU) to reject the Bush presidential library unless the administration reverses an executive order that gives former presidents and their heirs the right to keep White House papers secret in perpetuity.

"If the Bush folks are going to play games with the records, no self-respecting academic institution should cooperate," said Steven Aftergood, director of the Project on Government Secrecy at the Federation of American Scientists.

The policy triggered outrage and a still-pending lawsuit when President Bush issued it about seven weeks after the September 11 terrorist attacks. Now, as SMU officials try to complete a deal for a Bush library, museum, and policy institute, the Society of American Archivists plans a public relations offensive meant to pressure Congress and the university to force a change.

"Whether they like it or not, they have become a player in that discussion," said Mark Greene, president-elect of the archivists and director of the University of Wyoming's American Heritage Center. "There's been no indication from the Bush administration that they have in any way rethought the executive order, and it is our hope that these negotiations provide a possible pivot point."

SMU Vice President Brad Cheves said the university is well aware of the debate, but is mindful that rules regarding release of presidential papers have evolved in the last thirty

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censorship dateline

libraries

West Haven, Connecticut

A book in a West Haven elementary school has outraged a mother who claims it has exposed her young daughter to the occult. On February 9, she brought the book back to school to ask other parents' opinion and to confront the principal.

Wizardology: The Book of the Secrets of Merlin was checked out of West Haven's Molloy Elementary School library by Cary Alonzo's eight-year-old daughter.

"Well, it has pentagrams in here. It has how to cast spells with actual spells to say and recite," said Alonzo. The book even has a few tarot cards. With the popularity of Harry Potter, this book is apparently also a hot item. Alonzo says it teaches an alternative religion that's potentially dangerous.

"If I cannot go in this library and pick up a Bible or a Koran, I don't think this should be there either," said Alonzo.

Showing the book to other parents at Molloy's movie night, she enlisted support. "Books like that shouldn't be in the schools. If the parents want to get the books, they should get them on their own," said Joe Vecellio of West Haven.

Others aren't bothered a bit and say this kind of attention is a black eye to an otherwise outstanding school. "Things like this put a bad name to the school where it's a school where teachers work hard, the assistants work hard, the principal works hard," said Rosemary Russo of West Haven.

"I looked at it, you know, I guess everybody's different, there are some items that could be taken the wrong way," said Molloy principal Steve Lopes.

Lopes says *Wizardology* was ordered through *Scholastic* magazine and is a part of a series that did go through a selection process. It has now been pulled off the shelf and will be reviewed. That is not enough for Alonzo, who says if one slipped through, there may be others.

"At this level, they're young, they're very impressionable," said Alonzo. Reported in: wtnh.com, February 9.

Jacksonville, Florida

A book available in the Mandarin High School library has a family questioning the book's literary value in a public school setting. *Vegan Virgin Valentine* by Carolyn Mackler is a racy tale of two seventeen-year-olds trying to find themselves. Anne Ferrell is a concerned parent who found the book of marginal value saying, "They use the f-word everywhere else. That's unacceptable."

Anne and her husband, John, are requesting a review committee at a district level pass judgment on the appropriateness of the book.

Mandarin High principal, Dr. Crystal Sisler, said she encourages parents to know what their children are reading. She pointed out that in an academic setting some profanity can be found in books, saying, "There are college level classes and there's work the College Board has selected for the literary value."

John Ferrell and his wife believe at a minimum the book should require parental permission to be checked out. "We understand parents are going to have different values. We understand that, but this definitely crosses the line," Ferrell said. Reported in: firstcoastnews.com, February 19.

Miami, Florida

The mother of an elementary school student has checked out two controversial books from a Miami-Dade County public school, saying she wants to prevent children from getting the wrong impression about life in Cuba. Dalila Rodriguez, a member of the Concerned Cuban Parents Committee, said that she did not plan to return them and would "lock them in a box." Records show the books were due back February 21 at the Norma Butler Bossard Elementary School library.

One of the books was *Vamos a Cuba (A Visit to Cuba)*, the children's travel book banned by the Miami-Dade school board in June 2006 but reinstated by a federal court after the American Civil Liberties Union of Florida filed a lawsuit. The other was *Cuba*, by Sharon Gordon, a title in

the Discovering Cultures series published by Benchmark Books.

"If you take it out and don't return it, no kid can read it. It's not censoring; it's protecting our children from lies," Rodriguez said, adding that it romanticized life on the Communist island.

School district spokesman Felipe Noguera said the idea "didn't seem to correspond with respect for democracy and due process." Of the forty-eight copies of *Vamos a Cuba* in the county's school libraries, seventeen are reportedly overdue or lost.

The *Vamos* case is scheduled for a hearing in the U.S. Court of Appeals for the Eleventh Circuit in Atlanta later this year. Reported in: *American Libraries* Online, February 23.

Mastic, New York

The book is called *TTYL*—instant message code for "Talk to Ya Later"— and eleven-year-old Amanda Franchi said it's one of the most popular books in the William Floyd Middle School library. "Everybody's reading it," she said.

But Amanda had barely cracked open the book when her mom took a look—and then took it away. "I was mortified my eleven-year-old got this out of her school library," Coleen Franchi said.

The book, written entirely in "instant messages," tells the story of three fifteen-year-old friends in their sophomore year of high school. Yellow Post-its denote pages of mature content Coleen Franchi found in the book, including curse words, crude references to the male and female anatomy, sex acts, and adult situations such as drinking alcohol and flirtation with a teacher that almost goes too far:

> mad maddie: I can't believe u let yourself be alone with him—and in a HOT TUB no less . . .
>
> zoegirl: . . . I was, like, paralyzed, just sitting there clenching my toes while mr. h kept inching his way towards me.

"I don't want my daughter subjected to the sexual content that's in this book," Coleen Franchi said. "I'm not saying it's a bad book. It's not age appropriate for an eleven-year-old."

The publisher, Harry N. Abrams, agrees. According to them, *TTYL* is for kids ages fourteen and up, and Franchi wants it off the school's library shelves. "I want her to be worldly, but not this worldly," Coleen Franchi said. "Not at eleven."

A spokesman for the William Floyd School District said the book will remain in the library, and that the book is very popular with students across the country. The spokesperson also said unlike many books that young people read, *TTYL* deals with controversial subjects without glorifying negative behaviors. Reported in: wcbstv.com, January 19.

Rochester, New York

Monroe County Executive Maggie Brooks has threatened to pull $7.5 million in county funding for the Rochester Public Library's (RPL) Central Library because of its policy allowing patrons to view blocked Web sites on request. The American Civil Liberties Union criticized Brooks's action February 22 and reproached the library for reacting to it by putting a temporary moratorium on unblocking lawful Web sites.

Brooks became aware of the library's policy after local television station WHEC captured on camera library computer users viewing pornography within sight of other patrons. "As a mother, I was horrified to see our community's children put in a position of being exposed to matters beyond their comprehension in some cases, in a place designed for learning," Brooks said. Rochester Mayor Robert Duffy also opposes the library's policy.

The controversy continues the national debate about the Children's Internet Protection Act, passed in 2000, which states that libraries receiving federal e-rate funds must limit access to Web sites with obscene or pornographic content. The RPL Central Library, which expects to receive in 2007 about $240,000 in e-rate revenue, has a policy consistent with a 2003 Supreme Court upholding of CIPA that directs librarians to comply with adults requesting access to blocked Web sites.

Additionally, the Central Library requires the use of tinted privacy screens on computers displaying content from unblocked Web sites, and prohibits their viewing in the areas of the building most heavily used by children.

But library trustees temporarily revoked their unblocking policy February 21, citing the fact that the proposed cuts—$6.6 million for operating costs and about $900,000 to pay debts—represent about 70 percent of the library's budget. "My personal view is that the funding stream at issue here is so significant that I certainly don't want to jeopardize it," George Wolf, head of the Monroe County Library System board, said.

Scott Forsyth, local counsel for the ACLU, said that the organization would consider suing the library if it continued to block access. "What real significant difference is there between denying an adult patron access to these sites and denying patron access to *Catcher in the Rye*?" he asked. Reported in: *American Libraries* Online, February 23.

Raleigh, North Carolina

According to the Wake County Board of Commissioners press office, all public library computers in the county will now be banned from visiting the popular MySpace.com Web site over the Internet, calling it an "attractive nuisance." The county said it would begin blocking access to MySpace on March 1, and may start censoring other "nuisance" Web sites on the Web in a few months.

The Web site, owned by Rupert Murdoch's News Corporation, has gained in popularity over the years as a social networking Web site where members can build free personal pages to share photos, blogs, and also invite their friends to receive their updates.

"Although MySpace has many legitimate uses, it also serves as an attractive nuisance for those who gather in the libraries for purposes other than using the resources and collections for recreation, lifelong learning, or cultural purposes," the statement said.

"Some have used MySpace in libraries to recruit gang members, to sell or purchase drugs, or to view or post pornography," the county claims, although it did not offer any concrete examples of such actions.

Wake County Libraries says it will monitor the effectiveness of the filter after three to six months and "will decide at that time whether to take further actions," including censoring even more Web sites. Reported in: *Raleigh Chronicle*, February 26.

Ravenna, Ohio

Because of a parent's formal complaint, a national award-winning young adult novel currently is under the microscope of the Ravenna Board of Education. Angela Calo, mother of a seventh-grader at Brown Middle School, is requesting *America*, a novel by E. R. Frank, be withdrawn from the district, according to the written complaint submitted to the superintendent's office.

"What we kept finding and going over was sexual content and profanity," Calo said. "Yes, we decided it was not suitable for any child."

The novel, which deals mostly with the effects of childhood trauma, was part of a free reading library in the classroom of Cathy Adler, who teaches gifted and talented students at Brown Middle School. It is not, however, on any required reading lists within the city's school district.

Before allowing students to read the novel, Adler informed students the novel had "raw material," according to Calo.

"I don't think one parent's decision should limit others from reading it in the community," author Frank said. "My style of writing is that I try to convey as much authenticity as I can. While it is unfortunate and may be disturbing, foul language and clinical references to body parts and sexual violence exist in our world and for our children, which is very sad but it is real. I do not try to write to be a sensationalist."

The novel's main character, America, is a male fifteen-year-old who experienced a series of traumatic events as a child and is seeking guidance from his psychologist. According to Calo, the novel talks about child abuse, sexual and mental abuse, and it should be intended for college-level students or higher. According to Calo's formal complaint, *America* should be replaced by a novel that "has the same story line without profanity and sexual orientation," she said.

"The book has inappropriate language and sexual activities, such as masturbation, that is for adult content only," Calo added.

"We will review it according to our policy," Superintendent Tim Calfee said. "[The school's administration] is reading the book. The reviews are actually pretty positive. The book deals with problems that unfortunately are all too common in our society, but they are types of things you hear about on the news everyday."

America has received several awards, including the *New York Times* Notable Book Award. It also was a Garden State Teen Book Award nominee. Actress and childhood neglect advocate Rosie O'Donnell has drafted a screenplay intended for its adaptation as a film.

Calo also is concerned about two novels expected to be on next year's approved reading list for the school district, *Speak* by Laurie Halse Anderson and *Staying Fat for Sarah Byrnes* by Chris Crutcher. *Speak* already has been withdrawn from Aurora City School District, according to Calo. Reported in: *Ravenna Record-Courier*, March 14.

Easley, South Carolina

A young adult novel was among the topics of discussion at a meeting of the School District of Pickens County Board of Trustees February 26. *Fat Kid Rules the World*, by K. L. Going, was the subject of a parental complaint at the school level and a challenge at the district level. The board voted unanimously to eliminate the book, the story of a friendship between a suicidal teenager and a drug-addicted musician, from middle and high school library shelves. The book was never in elementary school libraries.

Trustee Alex Saitta said he was pleased with the decision. "I'm happy the district office and the board chose to over rule this action at the school level," he said. "We need to keep this garbage out of our schools and consistently be on the right side of this issue."

Parent Kathy Morgan filed the original complaint about the book with Dacusville Middle School. The word "fuck" is the prominent word in the book, Morgan said. "The language, the sexual references, the drug use, these are not appropriate for middle school students. Middle school students are so impressionable," she said.

After Morgan filed the complaint, the Dacusville Middle School Board of Review convened to discuss the young adult novel. In a letter dated January 8, the Board of Review informed Morgan of its decision to retain the book on Dacusville Middle School shelves. The Board of Review voted 6–1 to retain the book.

The letter stated that, although there were concerns regarding the language and references to suicide, the committee felt that the book has a valuable lesson and is

appropriate for some children at the middle school level. *Fat Kid Rules the World* was not required reading at Dacusville Middle or any other Pickens County school. After receiving the letter from the Dacusville Middle School Board of Review, Morgan contacted the district office and expressed her wish to file a challenge to the book on the district level. The district committee then convened, and, after reviewing the book, made a recommendation that the book be removed from middle school shelves.

Assistant Superintendent of Instructional Services Dr. Libba Floyd presented the recommendation to the board during the February 26 meeting. Trustee Oscar Thorsland questioned the appropriateness of the book for high school libraries. "If it's inappropriate for middle schools, shouldn't it be inappropriate it for high schools?" Thorsland asked. The motion originally called for the removal of the book from middle school shelves. Trustee Saitta requested that the motion remove the book from high school shelves as well.

Trustee Dr. Jim Brice wondered if by waiving policy and eliminating the book from high school shelves, the board was setting itself up for a challenge from the American Civil Liberties Union. Board Chair Dr. B. J. Skelton agreed that was a possibility. "Some things are worth the challenge," Skelton said. "Sometimes you do what you have to do." Thorsland asked Floyd how the book had been approved for school libraries. Floyd said that she believed the book's award-winning status led to the decision to order it for the libraries.

In 2004, *Fat Kid Rules the World* was named a Michael Printz honor book for execellence in young adult literature by the Young Adult Library Services Association.

The board voted unanimously to waive the policy concerning a review and eliminate the book from middle and high school shelves. Morgan said that while the board's decision pleased her, she still had concerns about the books on school library shelves. "You just assume when your child brings something home from the school library, that its going to be okay," Morgan said. "That book is the kind of thing that we would never allow in our house." Morgan said that while she does not feel that anyone at Dacusville Middle is at fault, she believes that the system can be changed to ensure that children are not exposed to objectionable material. Reported in: *Easley Progress*, February 28.

Murfreesboro, Tennessee

Jackie Taylor says she's appalled that a poetry book her nine-year-old daughter checked out at Cedar Grove Elementary School features what she considers "obscene" images. Pointing out caricatures of a naked young boy and a nursing mother and her carnivorous baby, Taylor believes the book, *I Saw Esau, The Schoolchild's Pocket Book*, is not appropriate for her daughter, Bethany.

"I understand that it is a book of poetry, but there is a fine line between poetry art and porn, and this book's illustrations are absolutely offensive in every way," Taylor said. "They are inappropriate for a third-grader, and the fact that she had access to this book frightens me for what else she has access to."

The book, by Iona Opie, is a collection of schoolyard jokes, riddles, insults, and jump-rope rhymes. Watercolor, colored pencil, and ink illustrations accompany the text. It was published in 1992. Bethany checked out the book as part of a class assignment. The book was not mandatory reading, her mother said.

Elizabeth Hicks, the school's librarian, said Taylor did not contact her about her concerns, but officials would have addressed the issue in a timely fashion. "It saddens me that she did not attempt to contact us—myself personally or the administration—about her concerns. If a parent has a concern, we want to share that with them," Hicks said.

Hicks said the K–5 school has to meet the interests and needs of a large variety of students at different reading and learning levels. "This is a folk tale book. It's part of world history of literature and an important genre in our library," Hicks said. "Folk tale comes from different cultures, so their customs and traditions comes out in this kind of literature."

Hicks added the book has been recognized by the *School Library Journal*, *Publisher's Weekly*, *Book List,* and The *New York Times*. However, she said it's only been checked out twice in the past ten years.

Taylor, however, believes parents should have the right to say "yes" or "no" about the book's presence in an elementary school library. In addition to the images of nudity, Taylor said the book features a poem suggesting that Moses and his children landed in hell and another one suggesting witchcraft.

"It probably would not have bothered me as much if Bethany was older and had brought it home as part of an assignment. I trusted the school. I had no reason not to trust the school. Now I do. Now I check her books very single time she comes home."

Until she gets some answers about the book, Taylor said she's not "giving them this book back, so it can disappear." Reported in: *Murfreesboro Daily News Journal*, February 7.

Salt Lake City, Utah

It was "unfortunate" at best and censorship at worst, say those who have learned that the Salt Lake County Library System canceled the speaking engagement of an acclaimed author whose book was pulled from the library's "One County, One Book" reading program.

Mark Spragg, who wrote *An Unfinished Life,* was notified in late January that his book had been selected as Salt Lake County's choice for its program. At the same time, he was invited to speak at October activities to culminate the event.

Spragg, who lives in Cody, Wyoming, accepted the invitation, but two weeks later he got an e-mail he described as rather curt and "not particularly apologetic," saying the

offer had been rescinded. Library system employee Susan Hamada wrote that she'd been "directed to select an alternate title."

An Unfinished Life, published in 2004, was also made into a movie of the same title in 2005, starring Academy Award-winning actors Robert Redford and Morgan Freeman. "Spragg unfolds a marvelous, unsentimental family story," wrote Claire Dederer in the *New York Times Book Review*. "The peace these hard characters make for themselves is sweet and difficult and very satisfying."

But apparently at least one local librarian found rough language in the book objectionable—although that was only one reason why a library system administrator said he re-evaluated a decision to choose the novel for the program and then deemed it not "appropriate for our audience."

Jim Cooper, director of county libraries, first said a county staffer "jumped the gun" on informing Spragg his novel had been selected. Cooper later conceded he'd overridden a decision by an "informal" committee that chose the book. "I decided that another book would be more appropriate for our audience and for the time," Cooper said.

The goal of the program is to encourage county residents to "get on the same page" by reading and discussing the same book, according to library Web sites. From April to October, libraries make the books available and encourage communities to read and discuss the material.

A committee of five or six chose *An Unfinished Life* this year. One thousand copies were purchased so libraries under the county umbrella would have plenty.

Cooper said he was not in on the initial decision, but after re-evaluating the amount of exposure given to the book in promotions and other community programs, decided to go with a novel that was "a little fresher."

Cooper acknowledged that one male librarian did ask him about the language he'd heard on an audio version of the book, but that wasn't why he bounced it. "It is not a censorship issue," he said.

But Spragg said—and sources close to the details privately confirm—there was scrutiny from library system officials about rough scenes in the book involving a character named Roy, who is a violent person, a batterer, and uses obscene language. One bookseller with contacts in the publishing business said a New York literary agent told her Salt Lake City is the "laughing stock" of the publishing world. Spragg himself called the situation "utterly regrettable."

"There is a moment of personal disappointment for me, but that's not what this is about," he said. "When a library all of the sudden acts as a vetting process, that is not acceptable," he said.

"This is such a black mark on our city," said Betsy Burton, owner of The King's English bookstore in Salt Lake City.

Spragg believes the decision about the book was reversed because someone complained about his Roy character's actions and language. "They made assumptions about the audience," Spragg said. "I don't think the Mormon population would find this book off-putting at all." Beyond that, he said, "You don't ask someone to dance, then say 'You're too unsightly,' when they stand up from the table."

"It is unfortunate," Cooper said of inviting, then uninviting, Spragg. He said he is sorry for the upset, but Cooper hasn't called the author to apologize himself. He said he hasn't heard from Spragg.

The Life of Pi will now be the One County, One Book selection, Cooper said. Reported in: *Deseret News*, March 30.

schools

Sacramento, California

After commending a roomful of Sikh activists for successfully influencing public policy, the State Board of Education voted unanimously March 8 to remove a picture Sikh leaders find offensive from future printings of a textbook and to cover it—with a sticker—in copies now circulating in California schools.

The picture that upset the Sikh activists appears in a seventh-grade history book called *An Age of Voyages: 1350–1600.* It is a reproduction of a nineteenth century painting that shows the founder of their religion in the style of a Muslim chieftain, with a short beard and mustache and wearing a golden crown on his head.

Sikhs representing temples across Northern California asked the board to replace that picture with one that shows Guru Nanak with a long beard and mustache and a turban on his head—the way Sikhs believe he looked when he created the religion in the 1500s. Observant Sikhs still dress in this fashion; they wear turbans and do not trim their facial hair.

About twenty Sikhs wearing turbans in shades of orange, yellow, and purple carried an enormous portrait of Guru Nanak into the meeting and displayed it during their testimony. One after another, they described their unhappiness with the image in the text, saying it will confuse Sikh children who believe their founder wore a turban and misinform non-Sikh children unaware of the difference between Sikhs and Muslims.

"When my kids go to school I want them to feel proud," said Gurcharan Singh Mann of the Sikh temple in Fremont. "The publisher is misrepresenting reality."

It was clear their pleas struck a chord. An African-American high school teacher spoke emotionally in support of the Sikhs. "I can attest to the pain of what a bad picture in a history book can do to a child," Curtis Washington said, choking back tears.

The debate over who gets to tell schoolchildren the history of a people has been growing in California. Many

religious and ethnic groups have tried to shape the way they are portrayed in state-approved history books.

Diane Ravitch, author of *The Language Police: How Pressure Groups Restrict What Students Learn*, said California's decisions about textbooks affect the entire country because publishers cater to the largest states.

"We're a very, very, very diverse society and if every group—religious, ethnic, gender, every group with a special interest in seeing history portrayed their way—if they all get their ways, we'll have nothing left," Ravitch said. That will lead to a nation that knows "nothing about history other than what groups want them to know," she said.

The State Board of Education didn't seem concerned about that. After listening to public comment, board members agreed to remove the picture of Guru Nanak from future printings of the book and debated whether to go even further and cover the offending image in existing books.

Board member Donald Fisher said he wanted to change the books now in circulation. "We may not have a legal right to tell them [how to change the book], but I think they would do what we're suggesting," said Fisher. "Otherwise we may not buy their next book."

The board voted unanimously to do as Fisher wished: remove the image from future printings and ask the publisher to make a sticker that California schools can use to cover it in the roughly five-hundred books circulating in the state.

What that sticker will look like has not been determined. The board urged the publisher to develop a sticker that "covers the existing image of Guru Nanak and displays an appropriate picture of Guru Nanak or text explaining use of the sticker."

Board member Alan Bersin said such a sticker would create "a teachable moment about the First Amendment, about the loyalty to the Sikh view and why that image is [controversial]. This has been a good exercise in American democracy," he said.

Board member Yvonne Chan said that she sympathized with the Sikhs' concern about being stereotyped or misunderstood because she is Chinese. She praised the Sikhs. "See how mobilized you are? You can change opinions; you can change policy," Chan said.

No one from Oxford University Press, which published the textbook in question, spoke at the meeting. In the days before, publisher Casper Grathwohl said his company uses only historic images in its history texts. The portrait favored by Sikhs, which was painted in the 1960s, is too modern for Oxford, he said.

Onkar Bindra, a Sacramento Sikh who led the effort to remove the Muslim-style image of Guru Nanak from the text, said he was pleased. "I would urge the board to make sure that a proper picture is included" in future printings, he said. "The department and the publisher should have the wisdom to consult with us."

Ravitch, a professor of education at New York University, said she wasn't surprised by the board's decision. When the state approved textbooks several years ago, she said, the board responded to criticism from activists of every kind: Armenian, Polish, Arab, American Indian, Chinese, Japanese, African-American, Latino, feminist, gay, Christian, Jewish, Muslim, and atheist. "The question is: Are they supposed to be accurate, or are they supposed to be sensitive?" she said. "California, unfortunately, leads the nation in trying to sanitize textbooks and make them sensitive." Reported in: *Sacramento Bee*, March 9.

Wilton, Connecticut

Student productions at Wilton High School range from splashy musicals such as last year's *West Side Story,* performed in the state-of-the-art, $10 million auditorium, to weightier works such as Arthur Miller's *Crucible,* on stage last fall in the school's smaller theater.

For the spring semester, students in the advanced theater class took on a bigger challenge: creating an original play about the war in Iraq. They compiled reflections of soldiers and others involved, including a heartbreaking letter from a 2005 Wilton High graduate killed in Iraq last September at age nineteen, and quickly found their largely sheltered lives somewhat transformed.

"In Wilton, most kids only care about Britney Spears shaving her head or Tyra Banks gaining weight," said Devon Fontaine, 16, a cast member. "What we wanted was to show kids what was going on overseas."

But even as fifteen student actors were polishing the script and perfecting their accents for a planned April performance, the school principal canceled the play, titled *Voices in Conflict,* citing questions of political balance and context.

The principal, Timothy H. Canty, who has tangled with students before over free speech, said in an interview he was worried the play might hurt Wilton families "who had lost loved ones or who had individuals serving as we speak," and that there was not enough classroom and rehearsal time to ensure it would provide "a legitimate instructional experience for our students."

"It would be easy to look at this case on first glance and decide this is a question of censorship or academic freedom," said Canty, who attended Wilton High himself in the 1970s and has been its principal for three years. "In some minds, I can see how they would react this way. But quite frankly, it's a false argument."

At least ten students involved in the production, however, said that the principal had told them the material was too inflammatory, and that only someone who had actually served in the war could understand the experience. They said that Gabby Alessi-Friedlander, a Wilton junior whose brother is serving in Iraq, had complained about the play,

and that the principal barred the class from performing it even after they changed the script to respond to concerns about balance.

"He told us the student body is unprepared to hear about the war from students, and we aren't prepared to answer questions from the audience and it wasn't our place to tell them what soldiers were thinking," said Sarah Anderson, a seventeen-year-old senior who planned to play the role of a military policewoman.

Bonnie Dickinson, who has been teaching theater at the school for thirteen years, said, "If I had just done *Grease,* this would not be happening."

Frustration over the inelegant finale quickly spread across campus and through Wilton, and led to protest online through Facebook and other Web sites.

"To me, it was outrageous," said Jim Anderson, Sarah's father. "Here these kids are really trying to make a meaningful effort to educate, to illuminate their fellow students, and the administration, of all people, is shutting them down."

First Amendment lawyers said Canty had some leeway to limit speech that might be disruptive and to consider the educational merit of what goes on during the school day, when the play was scheduled to be performed. But thornier legal questions arise over students' contention that they were also thwarted from trying to stage the play at night before a limited audience, and discouraged from doing so even off-campus.

The scrap over *Voices in Conflict* was the latest in a series of free-speech squabbles at Wilton High, a school of 1,250 students that is consistently one of Connecticut's top performers and was the alma mater of Elizabeth Neuffer, the *Boston Globe* correspondent killed in Iraq in 2003.

A recent issue of the student newspaper, *The Forum,* included an article criticizing the administration for requiring that yearbook quotations come from well-known sources for fear of coded messages. After the Gay Straight Alliance wallpapered stairwells with posters a few years ago, the administration, citing public safety hazards, began insisting that all student posters be approved in advance.

Around the same time, the administration tried to ban bandanas because they could be associated with gangs, prompting hundreds of students to turn up wearing them until officials relented.

"Our school is all about censorship," said James Presson, 16, a member of the *Voices of Conflict* cast. "People don't talk about the things that matter."

After reading a book of first-person accounts of the war, Dickinson kicked off the spring semester—with the principal's blessing—by asking her advanced students if they were open to creating a play about Iraq. In an interview, the teacher said the objective was to showcase people close to the same age as the students who were "experiencing very different things in their daily lives and to stand in the shoes of those people and then present them by speaking their words exactly in front of an audience."

What emerged was a compilation of monologues taken from the book that impressed Ms. Dickinson, *In Conflict: Iraq War Veterans Speak Out on Duty, Loss, and the Fight to Stay Alive*; a documentary, *The Ground Truth*; Web logs, and other sources. The script consisted of the subjects' own words, though some license was taken with identity: Lt. Charles Anderson became "Charlene" because, as Seth Koproski, a senior, put it, "we had a lot of women" in the cast.

In March, students said, Gabby, the junior whose brother is serving in the Army in Iraq, said she wanted to join the production, and soon circulated drafts of the script to parents and others in town. A school administrator who is a Vietnam veteran also raised questions about the wisdom of letting students explore such sensitive issues, Canty said.

In response to concerns that the script was too antiwar, Dickinson reworked it with the help of an English teacher. The revised version is more reflective and less angry, omitting graphic descriptions of killing, crude language, and some things that reflect poorly on the Bush administration, such as a comparison of how long it took various countries to get their troops bulletproof vests. A critical reference to Donald H. Rumsfeld, the former defense secretary, was cut, along with a line from Cpl. Sean Huze saying of soldiers: "Your purpose is to kill."

Seven characters were added, including Maj. Tammy Duckworth of the National Guard, a helicopter pilot who lost both legs and returned from the war to run for Congress last fall. The second version gives First Lt. Melissa Stockwell, who lost her left leg from the knee down, a new closing line: "But I'd go back. I wouldn't want to go back, but I would go."

On March 13, Canty met with the class. He told us "no matter what we do, it's not happening," said one of the students, Erin Clancy. In classrooms, teenage centers, and at dinner tables around town, the drama students entertained the idea of staging the show at a local church, or perhaps al fresco just outside the school grounds. One possibility was Wilton Presbyterian Church.

"I would want to read the script before having it performed here, but from what I understand from the students who wrote it, they didn't have a political agenda," said the Rev. Jane Field, the church's youth minister.

Canty said he had never discouraged the students from continuing to work on the play on their own. But Dickinson said he told her "we may not do the play outside of the four walls of the classroom," adding, "I can't have anything to do with it because we're not allowed to perform the play and I have to stand behind my building principal."

Parents, even those who are critical of the decision, say the episode is out of character for a school system that is among the attractions of Wilton, a well-off town of 18,000 about an hour's drive from Manhattan. "The sad thing was this thing was a missed opportunity for growth from a school that I really have tremendous regard for," said

Emmalisa Lesica, whose son was in the play. Given the age of the performers and their peers who might have seen the show, she noted, "if we ended up in a further state of war, wouldn't they be the next ones drafted or who choose to go to war? Why wouldn't you let them know what this is about?"

The latest draft of the script opens with the words of Pvt. Nicholas Madaras, the Wilton graduate who died last September and whose memory the town plans to soon honor by naming a soccer field for him. In a letter he wrote to the local paper last May, Private Madaras said Baqubah, north of Baghdad, sometimes "feels like you are on another planet," and speaks wistfully about the life he left behind in Wilton.

"I never thought I'd ever say this, but I miss being in high school," he wrote. "High school is really the foundation for the rest of your life, whether teenagers want to believe it or not."

Private Madaras's parents said they had not read the play, and had no desire to meddle in a school matter. But his mother, Shalini Madaras, added, "We always like to think about him being part of us, and people talking about him, I think it's wonderful." Reported in: *New York Times*, March 24.

Missouri Valley, Iowa

A western Iowa school district temporarily barred a book from being taught in classrooms after receiving complaints that the book uses racial slurs and profanity. *Whale Talk* by Chris Crutcher, which has already been either banned or taken off reading lists in districts in Alabama and South Carolina, was being taught to sophomore English students at Missouri Valley High School.

Tom Micek, the district's superintendent, said a committee will review the book and decide if it should be permanently removed from district classrooms.

"I understand there is profane language in the book," he said, "but in the absence of reading the text and understanding the language in the context of the story it is premature of me to comment."

Whale Talk, published in 2001, is about a seventeen-year-old boy confronting his multicultural heritage while creating a swim team at a high school that has no pool. The Missouri Valley district removed the book from the English class after a local pastor complained about its explicit language.

"The book seems innocuous enough when you look on the cover jacket," said the Rev. Nathan Slaughter. "It's about teaching tolerance. But it's filled with obscenities and tries to use negative things to teach the lesson."

Crutcher's writings are not new to Iowans' scrutiny. In 2004, parents in Solon leveled complaints against two of his stories, arguing that they used racists terms, promoted homosexuality, and perpetuated gay stereotypes. The school board voted to keep the two books.

More recently, *Whale Talk* was removed from South Carolina's high school suggested reading list, and it was banned by the Limestone County school board in northern Alabama in March 2005.

Libby Riley, whose daughter had been reading the book in her English class, wanted *Whale Talk* taken out. "I especially object to the racial verbiage," she said. "I can hardly say those words, and I am not a minority person. I know they are trying to teach diversity, but that is not the way to do it."

Board members have also expressed concern that the book may not be appropriate for sophomores. "We don't condone that kind of language, but we have a process in place to address the issue," said Mark Warner, a board member. "We have to have a chance to read it." Reported in: *Sioux City Journal*, February 25.

Louisville, Kentucky

Eastern High student Leo Comerlato was just thirty pages from the end of Toni Morrison's classic novel *Beloved* when his teacher told him to stop reading.

Why? Because at least two parents had complained that the Pulitzer Prize-winning novel about antebellum slavery depicted bestiality, racism, and sex—inappropriate reading, they said, for 150 senior Advanced Placement English students.

So principal James Sexton ordered teachers to start over with *The Scarlet Letter* by Nathaniel Hawthorne, in preparation for upcoming AP exams that include questions on classic novels.

The March decision outraged some parents and students.

Many parents "think it's just ridiculous," said Paula Wolf, a PTA member whose daughter is in the class. "That book has been read for several years."

Leo, 17, called it "censorship" and said "students are furious."

Sexton said he was trying to make the best of a difficult situation. "People think I'm censoring, but I'm not," he said. "The only reason we stopped the discussion process is that we didn't have a good process to challenge books . . . they can finish it at home."

There is no procedure for challenging books before the school council, but Sexton said the council will create such a policy. Normally students who object to books are assigned an alternative, Sexton said. But because the class had almost finished *Beloved* before complaints were raised, he said he wanted to spare a small number of students from being "ostracized" and having to study a new book.

Sexton wouldn't identify the parents who complained, and he said he's not ruling out that the book could be taught again.

Senior AP English teachers may choose from among twenty-four books ranging from Mark Twain's *The*

Adventures of Huckleberry Finn to Dostoevsky's *Crime and Punishment*. Students are supposed to read and discuss eight books by the time of the exams.

However, of *Beloved* Sexton said he believes "some of the language and some of the points made, from this principal's perspective, are hard to have in high school."

Sexton said that in eighteen years, he's only had four complaints like the ones about *Beloved*—and one of them was about a different Morrison novel.

Beloved is the story of an escaped slave haunted by memories of her murdered child. It portrays her plantation days and life after the Civil War. Considered a classic of literature and written by one of America's foremost African-American women novelists, the book frequently has been challenged in schools across the country, partly because of its depiction of rapes, beatings, and murders.

"At one point, it's talking about a plantation. And there's no females. So the men resort to bestiality," Leo Comerlato said, adding that he didn't object because "we're in a college-level class." Reported in: *Louisville Courier-Journal*, March 28.

Minneapolis, Minnesota

Ken Gilbert read *The Adventures of Huckleberry Finn* in the late 1960s in a segregated black North Carolina school, but he doesn't remember much about Huck's adventures and the book's status as an American classic. What he does remember is class discussions of the "N-word." Mark Twain used it over and over.

"Why were there so many usages of the same word?" he said. "We never got to the story line. It was the racial issue."

When daughter Nia was assigned to read it in her tenth-grade honors class, his memories of a racially volatile childhood came surging back. Now Gilbert and his wife, Sylvia, are reviving a century-old debate by asking St. Louis Park High School to remove the novel from the required-reading list.

While controversy over the novel dates back to the 1880s, debate over use of the N-word by schools, theaters, and even black entertainers continues to make news. For Gilbert, a fifty-two-year-old small business owner, there's not much question: While no word should be banned entirely, he said, he believes it should not be tolerated in informal conversation or popular entertainment. For African-Americans, he said, "There's no word that brings you to a lower level. . . . It makes children feel less than equal in the classroom."

He does not seek to ban the book from the school. "I don't care if all of America reads the book," he said, but he doesn't want it to be required classroom reading.

A twelve-member committee of teachers, parents, a community member, and a school administrator reviewed the Gilberts' request. According to a letter to parents from Principal Robert Laney, the group decided that although some of the novel's language is offensive, "the literary value of the book outweighed the negative aspect of the language employed."

The Gilberts will appeal to Superintendent Debra Bowers.

As word of the challenge to the book spread at school, some students created posters saying "Save Huck Finn" and began a Web site objecting to the Gilberts' request.

Patrick Zahner, a junior, read the book last year after previously reading Twain's *Tom Sawyer*. He described the request to remove *The Adventures of Huckleberry Finn* as "misguided" because Twain uses racist characters "to parody racism." Similar arguments could be used "to take many other books out of the curriculum," he said.

Rosalyn Korst, head of the high school's language arts department, said that in her thirty-four years at St. Louis Park she could not recall a previous effort to remove a title from the curriculum. Some parents have asked that their children be allowed to read alternative books.

Korst said the Twain book's value in the curriculum rests partly on "learning to fight racism in a safe environment. . . . It's a good learning experience." She said Twain's uses of dialects, satire, and irony are important teaching tools and illustrate why he is considered "the authentic voice of the American people."

Korst said the book was read this year by more than one hundred students in four sections of the tenth-grade honors program. It also is read by eleventh-grade English students and is part of the required reading list of the International Baccalaureate program.

Laney said students may request an alternative assignment. Nia Gilbert and another student read *The Secret Life of Bees* by Sue Monk Kidd, as an alternative to *Huckleberry Finn*.

But Gilbert said such a request can make a student feel ostracized from the rest of the class. He said his daughter has taken heat at school because of the controversy. Gilbert said he is a former member of the Black Panther Party for Self Defense in North Carolina. The party, founded in 1966 in Oakland, California, had a reputation for championing black power, and its leaders espoused socialistic solutions to problems of poverty.

Gilbert said he joined at age ten because the Panthers were viewed in his neighborhood as a community service organization and as protection during a racially volatile time. He said the group offered havens from potential violence and that it once saved him and his brother from threatened harm by robed members of the Ku Klux Klan.

He said he "wholeheartedly" disagrees with the school committee's recommendation, and that if his appeal to Bowers fails he will suggest that his daughter leave the St. Louis Park school system. He predicted that because she knows he wants what's best for her, "She will accept my recommendation." Reported in: *Minneapolis Star-Tribune*, March 21.

Fulton, Missouri

When Wendy DeVore, the drama teacher at Fulton High, staged the musical *Grease,* about high school students in the 1950s, she carefully changed the script to avoid causing offense in this small town. She softened the language, substituting slang for profanity in places. Instead of smoking "weed," the teenagers duck out for a cigarette. She rated the production PG-13, advising parents it was not suitable for small children.

But a month after the performances in November, three letters arrived on the desk of Mark Enderle, Fulton's superintendent of schools. Although the letters did not say so, the three writers were members of a small group linked by e-mail, all members of the same congregation, Callaway Christian Church.

Each criticized the show, complaining that scenes of drinking, smoking, and a couple kissing went too far, and glorified conduct that the community tries to discourage. One letter, from someone who had not seen the show but only heard about it, criticized "immoral behavior veiled behind the excuse of acting out a play."

Dr. Enderle watched a video of the play, ultimately agreeing that *Grease* was unsuitable for the high school, despite his having approved it beforehand, without looking at the script. Hoping to avoid similar complaints in the future, he decided to ban the scheduled spring play, *The Crucible* by Arthur Miller.

"That was me in my worst Joe McCarthy moment, to some," Dr. Enderle said.

He called *The Crucible* "a fine play," but said he dropped it to keep the school from being "mired in controversy" all spring.

The complaints here, which were never debated in a public forum, have spread a sense of uncertainty about the shifting terrain, as parents, teachers, and students have struggled to understand what happened. Among teenagers who were once thrilled to have worked on the production, *Grease* became "the play they'd rather not talk about," said Teri Arms, their principal, who had also approved the play before it was presented.

Grease and *The Crucible* are hardly unfamiliar; they are standard fare on the high school drama circuit, the second most frequently performed musical and drama on school stages, according to the Educational Theater Association, a nonprofit group. The most performed now are *Seussical* and *A Midsummer Night's Dream.*

Joseph Potter, an assistant professor of performing arts at William Woods University in Fulton, has staged dozens of shows for the community, including *Grease,* and said he had never received a complaint. But politically and socially, Potter said, the town's core is conservative.

The three complaints about *Grease* reached Dr. Enderle within the same week. Mark Miller, a twenty-six-year-old graduate student, said he was moved to complain after getting an e-mail message about the show from Terra Guittar, a member of his church. Her description of the pajama party scene offended him, he wrote, adding that one character should have worn a more modest nightgown. Miller did not see the play.

"It makes sense that you're not going to offend anyone by being on the conservative side, especially when you're dealing with students, who don't have the same power as a principal or a theater director," he said.

A tape of the dress rehearsal showed that while most of the girls in the scene wore pajamas or a granny gown, Rizzo, the play's bad girl, wore just a pajama top. After the other girls fell asleep, Rizzo slipped her jeans on to sneak out for a date.

Guittar was so outraged by the drinking and kissing onstage that she walked out on the performance. She said she was not trying to inhibit artistic creativity. "It was strictly a moral issue," she said. "They're under eighteen. They're not in Hollywood."

But other parents were happy with the play. Mimi Curtis, whose son John played the lead, said the principal and drama teacher went out of their way to respect parents' wishes, changing the script in response to her own objections to profanity. Curtis, who ran a concession stand during the play, saw all four performances.

"I didn't view it as raunchy," she said, adding that children who watch television are "hearing worse."

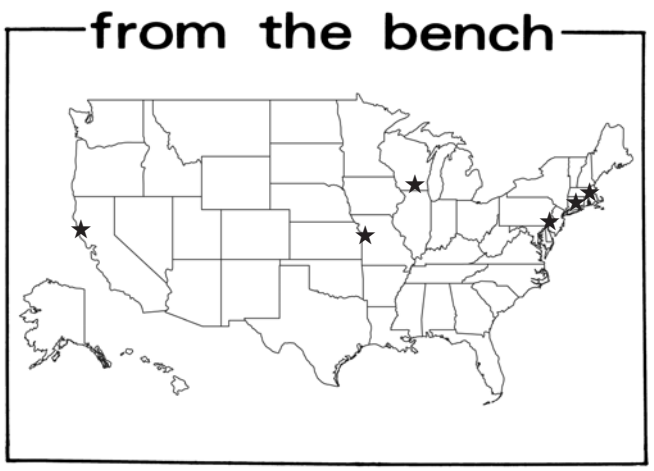
Dr. Enderle said he did not base his decision to cancel *The Crucible* just on the three complaints and the video. He also asked ten people he knew whether the play crossed a line. All but one, he recalled, said yes.

"To me, it's entirely a preventative maintenance issue," Dr. Enderle explained. "I can't do anything about what's already happened, but do I want to spend the spring saying, 'Yeah, we crossed the line again?'" Nevertheless, the superintendent said he was "not 100 percent comfortable" with having canceled *The Crucible.*

The absence of public debate meant that students heard of the cancellation as a fait accompli from their principal and the drama teacher. Others learned *The Crucible* was off limits through an internal school district newsletter. In it, Dr. Enderle said he dropped the play after seeing this summary of the movie based on the play on the Web: "seventeenth century Salem woman accuses an ex-lover's wife of witchery in an adaptation of the Arthur Miller play."

Miller wrote *The Crucible* in the 1950s, in response to the witch hunt of his own day, when Congress held hearings to purge Hollywood of suspected Communists, pressuring witnesses to expose others to prove their innocence. The affair is not acted out in the play, which focuses on how hysteria and fear devoured Salem, despite the lack of evidence.

(continued on page 123)



U.S. Supreme Court

Kenneth W. Starr had a strategy for convincing the Supreme Court that an Alaska high school principal and school board did not violate a student's free-speech rights by punishing him for displaying the words "Bong Hits 4 Jesus'' on a fourteen-foot-long banner across the street from school as the 2002 Olympic torch parade went by.

"Illegal drugs and the glorification of the drug culture are profoundly serious problems for our nation,'' Starr, a former solicitor general, told the justices in the opening moments of his oral argument March 19.

In other words, his approach was to present the free-speech case as a drug case and argue that whatever rights students may have under the First Amendment to express themselves, speaking in oblique or even in arguably humorous dissent from a school's official antidrug message is not one of them.

The case asks the justices to decide whether school officials can squelch or punish student advocacy of illegal drugs, but it has taken on an added dimension as a window on an active front in the culture wars, one that has escaped the notice of most people outside the fray. And as the stakes have grown higher, a case that once looked like an easy victory for the government side may prove to be a much closer call.

On the surface, Joseph Frederick's dispute with his principal, Deborah Morse, at the Juneau-Douglas High School in Alaska five years ago appeared to have little if anything to do with the First Amendment—or perhaps with much of anything beyond a bored senior's attitude and a harried administrator's impatience.

As the Olympic torch was carried through the streets of Juneau on its way to the 2002 winter games in Salt Lake City, students were allowed to leave the school grounds to watch. The school band and cheerleaders performed. With television cameras focused on the scene, Frederick and some friends unfurled a fourteen-foot-long banner with the inscription: "Bong Hits 4 Jesus.''

Frederick later testified that he designed the banner, using a slogan he had seen on a snowboard, "to be meaningless and funny, in order to get on television.'' Morse found no humor but plenty of meaning in the sign, recognizing "bong hits'' as a slang reference to using marijuana. She demanded that he take the banner down. When he refused, she tore it down, ordered him to her office, and gave him a ten-day suspension.

Fredericks's ensuing lawsuit and the free-speech court battle that resulted, in which he has prevailed so far, is one that, classically, pits official authority against student dissent. It is the first Supreme Court case to do so directly since the court upheld the right of students to wear black arm bands to school to protest the war in Vietnam, declaring in *Tinker* v. *Des Moines School District* that "it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.''

The court followed that 1969 decision with two others during the 1980s that upheld the authority of school officials to ban vulgar or offensive student speech and to control the content of school newspapers. Clearly there is some tension in the court's student-speech doctrine; what message to extract from the trio of decisions is the basic analytical question in the new case, *Morse* v. *Frederick*.

The justices appeared hesitant about resolving the tension. At some point, Justice Stephen Breyer groaned that a ruling for the students would encourage them to be "testing limits all over the place in the high schools," whereas a ruling for the schools would certainly end up limiting lots of speech.

Starr insisted that "Bong Hits 4 Jesus" promotes drugs. Justice Ruth Bader Ginsburg asked whether a sign that said "Bong Stinks for Jesus" would be more permissible. Justice Souter asked whether a simple sign reading "Change the Marijuana Laws" would also be "disruptive." Starr replied that interpreting the meaning of the sign must be left to the "frontline message interpreter," in this case, the principal. Then Starr said schools are charged with inculcating "habits and manners of civility" and "values of citizenship." Some court observers noted that Starr had thus posited, without irony, a world in which students may not peaceably advocate for changes in the law because they must be inculcated with the values of good citizenship.

While Starr may not prevail on the full breadth of his argument, his strategy appeared on the verge of succeeding well enough to shield his clients, the Juneau School Board and Deborah Morse, the high school principal, from having to pay damages to the student, Joseph Frederick.

A majority of the court may be willing to create what would amount to a drug exception to students' First Amendment rights, much as the court has in recent years permitted widespread drug testing of students, even those not personally suspected of using drugs, under a relaxed view of the Fourth Amendment prohibition against unreasonable searches.

Starr's biggest ally on the court appeared to be the man who once worked as his deputy in the solicitor general's office, Chief Justice John G. Roberts Jr. The chief justice intervened frequently throughout both sides of the argument, making clear his view that schools need not tolerate student expression that undermines what they define as their educational mission.

"Why is it that the classroom ought to be a forum for political debate simply because the students want to put that on their agenda?" Chief Justice Roberts asked Starr. The question was particularly interesting because Starr had just sought to reassure the court that his argument was not limitless. *Tinker,* the court's leading precedent on student speech, "articulates a baseline of political speech" that students have a presumptive right to engage in, Starr said.

That was too far to the middle for the chief justice. "Presumably, the teacher's agenda is a little bit different and includes things like teaching Shakespeare or the Pythagorean theorem," he said, adding that "just because political speech is on the student's agenda, I'm not sure that it makes sense to read *Tinker* so broadly as to include protection of that speech."

Chief Justice Roberts also took issue with a suggestion by the student's lawyer, Douglas K. Mertz, that schools that seek to inculcate an antidrug message must permit students, outside the formal classroom setting, to offer competing views. "Content neutrality is critical here," Mertz said.

"Where does that notion that our schools have to be content-neutral" come from, the chief justice wanted to know. He added, "I thought we wanted our schools to teach something, including something besides just basic elements, including character formation and not to use drugs."

Mertz clarified his point. "There is no requirement of equal time or that it be neutral," he said. The school should be able to express a viewpoint, he continued, but "in the lunchroom, outside in recess, across the street, that is a quintessentially open forum where it would not be proper, I think, to tell students you may not mention this subject, you may not take this position."

Here Justice Scalia asked whether a school that held an anti-drug rally in the gym would have to permit a student to wear a button that says, "Smoke pot. It's fun." Mertz repeated that student protest can't be "disruptive." Scalia retorted that "undermining what the school is trying to teach" is disruptive. Justice Kennedy asked whether a student could sport a button that says, "Rape is fun." Mertz said students may not advocate violent crime, which prompted Scalia to reply, "So, they can only advocate non-violent crime? Like, 'Extortion is profitable?'"

One issue in the case was the nature of the event at which the student unfurled his provocative banner. Edwin S. Kneedler, a deputy solicitor general who shared Starr's argument time and presented the Bush administration's position in support of the school, said the torch event was the equivalent of a school assembly, with students attending under their teachers' supervision and under the school's jurisdiction. Mertz said it was basically a public event in a public place. In that context, he argued, the sign was not disruptive.

The distinction matters, because under the *Tinker* precedent, student speech can lose its protected status if it is unduly disruptive.

Justice Anthony M. Kennedy took issue with Mertz's characterization of the display as not being disruptive. "It was completely disruptive of the message, of the theme that the school wanted to promote," Justice Kennedy said, adding: "Completely disruptive of the reason for letting the students out to begin with. Completely disruptive of the school's image that they wanted to portray in sponsoring the Olympics."

As in many other cases, Justice Kennedy's vote may prove crucial to the outcome. The case presents a particular challenge for him. While he is perhaps the most speech-protective of the justices, he also is highly pro-government on issues involving illegal drugs.

Justice Samuel A. Alito Jr. asked a series of questions suggesting that his sympathies lay with the student rather than the school. That would be consistent with a decision he wrote six years ago as a judge on the United States Court of Appeals for the Third Circuit that struck down a Pennsylvania school district's speech code.

In that case, *Saxe* v. *State College Area School District,* Judge Alito said the policy "strikes at the heart of moral and political discourse—the lifeblood of constitutional self-government (and democratic education) and the core concern of the First Amendment." His opinion was based on an interpretation of the *Tinker* precedent that was notably more robust than that put forward by Starr and Kneedler and, seemingly, by Chief Justice Roberts.

During the argument, Justice Alito interrupted Kneedler as the deputy solicitor general was asserting that a school "does not have to tolerate a message that is inconsistent" with is basic educational mission. "I find that a very, very disturbing argument," Justice Alito said, "because schools have defined their educational mission so broadly that they can suppress all sorts of political speech and speech

expressing fundamental values of the students under the banner of getting rid of speech that's inconsistent with educational missions.''

In response, Kneedler said that for that reason, "it would make a lot of sense'' for the court to issue a narrow ruling limited to student advocacy of illegal conduct in general or drug use in particular.

The case opened an unexpected fissure between the Bush administration and its usual allies on the religious right. On the surface, Frederick's dispute with his principal and school appeared to have little, if anything, to do with religion.

The Bush administration entered the case on the side of the principal and the Juneau School Board, which are both represented by Starr. The National School Board Association, two school principals' groups, and several antidrug organizations also filed briefs on the school board's side.

While it is hardly surprising to find the American Civil Liberties Union and the National Coalition Against Censorship on Frederick's side, an array of briefs from organizations that litigate and speak on behalf of the religious right has lifted *Morse* v. *Frederick* out of the realm of the ordinary.

The groups include the American Center for Law and Justice, founded by the Rev. Pat Robertson; the Christian Legal Society; the Alliance Defense Fund, an organization based in Arizona that describes its mission as "defending the right to hear and speak the Truth''; the Rutherford Institute, which has participated in many religion cases before the court; and Liberty Legal Institute, a nonprofit law firm "dedicated to the preservation of First Amendment rights and religious freedom.''

The institute, based in Plano, Texas, told the justices in its brief that it was "gravely concerned that the religious freedom of students in public schools will be damaged'' if the court rules for the school board.

Lawyers on Frederick's side offer a straightforward explanation for the strange-bedfellows aspect of the case. "The status of being a dissident unites dissidents on either side,'' said Prof. Douglas Laycock of the University of Michigan Law School, an authority on constitutional issues involving religion who worked on Liberty Legal Institute's brief.

In an interview, Professor Laycock said that religiously observant students often find the atmosphere in public school to be unwelcoming and "feel themselves a dissident and excluded minority.'' As the Jehovah's Witnesses did in the last century, these students are turning to the courts.

The briefs from the conservative religious organizations depict the school environment as an ideological battleground. The Christian Legal Society asserts that its law school chapters "have endured a relentless assault by law schools intolerant of their unpopular perspective on the morality of homosexual conduct or the relevance of religious belief.''

The American Center for Law and Justice brief, filed by its chief counsel, Jay Alan Sekulow, warns that public schools "face a constant temptation to impose a suffocating blanket of political correctness upon the educational atmosphere.''

What galvanized most of the groups on Frederick's side was the breadth of the arguments made on the other side. The solicitor general's brief asserted that under the Supreme Court's precedents, student speech "may be banned if it is inconsistent with a school's basic educational mission.''

The Juneau School Board's mission includes opposing illegal drug use, the administration's brief continues, citing as evidence a 1994 federal law, the Safe and Drug-Free Schools and Communities Act, which requires that schools, as a condition of receiving federal money, must "convey a clear and consistent message'' that using illegal drugs is "wrong and harmful.''

Starr's main brief asserted that the court's trilogy of cases "stands for the proposition that students have limited free speech rights balanced against the school district's right to carry out its educational mission and to maintain discipline.'' The brief argues that even if Morse applied that precept incorrectly to the facts of this case, she is entitled to immunity from suit because she could have reasonably believed that the law was on her side.

The religious groups were particularly alarmed by what they saw as the implication that school boards could define their "educational mission'' as they wished and could suppress countervailing speech accordingly.

"Holy moly, look at this! To get drugs we can eliminate free speech in schools?'' is how Robert A. Destro, a law professor at Catholic University, described his reaction to the briefs for the school board when the Liberty Legal Institute asked him to consider participating on the Mr. Frederick's behalf. He quickly signed on.

Having worked closely with Republican administrations for years, Destro said he was hard-pressed to understand the administration's position. "My guess is they just hadn't thought it through,'' he said in an interview. "To the people who put them in office, they are making an incoherent statement.'' Reported in: *New York Times*, March 18, 20; Slate.com, March 19.

The Supreme Court agreed March 26 to undertake its latest effort to define the permissible boundary between free speech and the government's prohibition of child pornography.

The justices agreed to hear a government appeal of a ruling issued last year by the federal appeals court in Atlanta that overturned part of a recent federal law aimed not only at the sexual exploitation of real children but also at computer-generated or enhanced images that help sustain the market for child pornography.

The appeals court, the United States Court of Appeals for the Eleventh Circuit, said that while the statute's goal was one of "extraordinary importance," its prohibition against "pandering" child pornography was too broadly worded and too vague to satisfy the First Amendment. "Congress may not burn the house to roast the pig," the court said.

In appealing to the Supreme Court, Solicitor General Paul D. Clement said the provision, a portion of a 2003 law known as the Protect Act, was "totally consistent with the Constitution" because it was aimed at a form of speech that was not entitled to constitutional protection.

"The court of appeals' misguided invalidation of the law undermines Congress's effort to protect children by eliminating the widespread market in child pornography," the government's appeal said. In another part of the brief, however, Clement said the government had invoked the section at issue "only rarely."

Congress passed the law to respond to a Supreme Court decision the year before that invalidated the Child Pornography Prevention Act of 1996. "Protect" is an acronym for the statute's formal title, Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today.

The appeals court invalidated a section known as the "pandering" provision, which makes it a crime to advertise, promote, distribute, or solicit "any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material contains" either "an obscene visual depiction of a minor engaging in sexually explicit conduct" or such a visual depiction of an "actual minor."

In other words, the government told the Supreme Court, the law allows prosecution of those who "make direct requests to receive, or offers to provide, what purports to be illegal material, regardless of whether the government can prove that such material is in fact real child pornography or that it even exists." The minimum sentence is five years.

The appeals court's decision came in an appeal brought by a man, Michael Williams, who was caught in a federal sting operation soliciting and offering child pornography in an Internet chat room. Secret Service agents obtained a warrant and searched his home, finding two computer hard drives with images of minors engaged in sexually explicit conduct.

The appeals court found that the photographs were "unquestionably" of "real" children, so that the case did not raise a question about the definition of "virtual" child pornography. The problem, the appeals court held, was with the absence of language in the law that would limit its application to commercial transactions.

While commercial promotion of child pornography would lack constitutional protection, the appeals court said, "the non-commercial, non-inciteful promotion of illegal child pornography, even if repugnant, is protected speech under the First Amendment."

Without such a limitation, the court continued, the law could apply to "any promoter—be they a braggart, exaggerator, or outright liar—who claims to have illegal pornography," and could subject such a person to up to twenty years in prison, even if the material was nothing more than "a video of 'Our Gang,' a dirty handkerchief, or an empty pocket."

Congress's effort in the 2003 law to define the crime precisely was a response to the Supreme Court's dissatisfaction with the earlier law, so broadly written, Justice Anthony M. Kennedy wrote for the majority, that it could have turned a modern production of *Romeo and Juliet* into a criminal act. Juliet was supposed to be only thirteen, Justice Kennedy noted, so her portrayal as a young teenager could well be a "visual depiction" of a minor, or one who appeared to be a minor, engaged in sexually explicit conduct, in violation of the law.

The court will hear the new case, *United States* v. *Williams*, in its next term. Reported in: *New York Times*, March 27.

Internet

Philadelphia, Pennsylvania

A federal judge struck down on March 22 the contentious Child Online Protection Act (COPA), which made it a crime for commercial Web sites to allow access to "harmful" material without first verifying user ages. In his ruling, Senior U.S. District Judge Lowell Reed Jr. stated that computer software filters serve to protect children from such controversial material—without violating free speech.

Reed heard the challenge to the 1998 law, which was never enforced due to injunctions and lower court decisions, in October 2006. In the *ACLU* v. *Gonzales* lawsuit, plaintiffs including sexual health Web sites, the American Civil Liberties Union, Salon.com, and Nerve.com, argued that many legitimate sites could fall under COPA's vague definitions.

The Justice Department is expected to file an appeal. "It is not reasonable for the government to expect all parents to shoulder the burden to cut off every possible source of adult content for their children, rather than the government's addressing the problem at its source," government attorney Peter D. Keisler said in a post-trial brief.

"Even defendant's own study shows that all but the worst performing (software) filters are far more effective than COPA would be at protecting children from sexually explicit material on the Web," said Reed.

The law would criminalize Web sites that allow children to access material deemed "harmful to minors" by "contemporary community standards." The sites would be expected to require a credit card number or other proof of

age. Penalties include a $50,000 fine and up to six months in prison.

Plaintiffs challenged the law on grounds it would have a chilling effect on speech. Reed agreed it would. "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," he wrote.

The U.S. Supreme Court upheld a temporary injunction in 2004 on grounds the law was likely to be struck down and was perhaps outdated.

Daniel Weiss of Focus on the Family Action, a lobbying arm of the conservative Christian group, said it would continue to press Congress for a workable law.

"The judge seems to indicate there's really no way for Congress to pass a good law to protect kids online. I just think that's not a good response," Weiss said.

To defend the nine-year-old law, government lawyers attacked software filters as burdensome and less effective, even though they have previously defended their use in public schools and libraries.

"I would hope that Attorney General Gonzalez would save the U.S. public's money and not try to further defend what is an unconstitutional statute," said lawyer John Morris of the Center for Democracy and Technology, which wrote a brief in the case. "That money could better be used to help educate kids about Internet safety issues," he said.

The plaintiffs argued that filters work best because they let parents set limits based on their own values and a child's age. Reed concluded that filters have become highly effective and that the government—if it wants to protect children—could do more to promote or subsidize them.

The law addresses material accessed by children younger than seventeen, but only applies to content hosted in the United States. The Web sites that challenged the law said fear of prosecution might lead them to shut down or move their operations offshore, beyond the reach of the U.S. law. They also said the Justice Department could do more to enforce obscenity laws already on the books.

Judge Reed noted in his eighty-three-page ruling that, since 2000, the Justice Department has initiated fewer than twenty prosecutions for obscenity that did not also involve other charges, such as child pornography or attempts to have sex with minors.

While the government argued for the use of credit cards as a screening device, Reed concluded from the evidence that there is currently no accurate way to verify the age of Internet users. And he agreed that sites that require a credit card to view certain pages would see a sharp drop-off in users.

The 1998 law followed the Communications Decency Act of 1996, Congress' first attempt to regulate online pornography. The Supreme Court in 1997 deemed key portions of that law unconstitutional because it was too vague and trampled on adults' rights. COPA narrowed the restrictions to commercial Web sites and defined indecency more specifically.

"This is the second time Congress has tried this, and both times the courts have struck it down. I don't see how Congress could write a constitutional statute," said the ACLU's Chris Hansen, a lead attorney on the case.

In 2000, Congress passed a law requiring schools and libraries to use software filters if they receive certain federal funds. The high court upheld that law in 2003.

Joan Walsh, Salon.com's editor-in-chief, said she was deposed at about the same time the magazine was deciding to publish photos of naked prisoners at Iraq's Abu Ghraib prison. "This law would have let any one of ninety-three U.S. attorneys . . . . (say) our Abu Ghraib photos were harmful to minors, and the burden would have been on us to prove that they weren't," Walsh said. Reported in: *American Libraries* Online, March 23; *San Jose Mercury-News*, March 23.

schools

Lexington, Massachusetts

A federal judge in Boston has dismissed a suit by two families who wanted to stop a Massachusetts town and its public school system from teaching their children about gay marriage, court documents show. The families filed the suit last year asserting that the reading of a gay-themed book, *King and King,* and handing out to elementary school students of other children's books that discussed homosexuality without first notifying parents was a violation of their religious rights.

U.S. District Court Judge Mark Wolf ruled February 23 that public schools are "entitled to teach anything that is reasonably related to the goals of preparing students to become engaged and productive citizens in our democracy."

"Diversity is a hallmark of our nation. It is increasingly evident that our diversity includes differences in sexual orientation," he said. He said the courts had decided in other cases that parents' rights to exercise their religious beliefs were not violated when their children were exposed to contrary ideas in school.

The complaint filed against the town of Lexington, about twelve miles west of Boston, had said the school had "begun a process of intentionally indoctrinating very young children to affirm the notion that homosexuality is right and normal in direct denigration of the plaintiffs' deeply held faith."

King and King, the book that sparked the case, tells the story of a crown prince who rejects a bevy of beautiful princesses, rebuffing each suitor until falling in love with a prince. The two marry, sealing the union with a kiss, and live happily ever after.

The Lexington school system said reading the book was not intended as sex education but as a way to educate children about the world in which they live, especially in Massachusetts, the only U.S. state where gays and lesbians can legally wed. A lawyer for the families said they would appeal the ruling. Reported in: reuters.com, February 24.

colleges and universities

San Francisco, California

In a major win for religious colleges, the California Supreme Court ruled 4-3 on March 5 that even "pervasively sectarian" institutions can have bonds issued by government agencies on their behalf, potentially saving them millions of dollars in the costs of construction.

To be eligible, the colleges must offer a broad array of courses, and the facilities must be used in ways that are equivalent to the use of facilities at secular institutions. So dormitories, dining halls, and classrooms for not specifically religious courses would be fine, but presumably the funds could not be used for churches or to house academic departments focused on religious instruction.

In the past, colleges that have religious ties, but in which religion does not play a dominant role in the campus ethos, have won the right to have bonds issued on their behalf, with the associated tax benefits. But the ruling goes much further in extending that right to colleges where religion is central to everything on the campus. As a result, the dissent said that the majority had gone too far.

The ruling came in a case involving requests to issue bonds by Azusa Pacific University, California Baptist University, and the Oaks Christian School.

As described by the court's majority opinion—and consistent with the universities' descriptions of themselves on their Web sites—the two universities offer a broad range of courses, and take faith seriously. California Baptist expects students to live by "biblically based Christian principles" and to attend church services. Faculty members must be Christians, and 51 percent must be Baptists. But only about 5 percent of students major in Christian or ministry studies.

Similarly at Azusa Pacific, only about 7 percent of students major in religious studies, but the institution's faith is central. All faculty members must be Christians. Students must exhibit "moral character" consistent with religious belief, and must complete 120 hours of student ministry assignments.

The institutions want the bonds issued on their behalf for such facilities as dining halls, dormitories, athletic facilities, and classroom buildings.

In the ruling, the Supreme Court of California analyzed tests on church-state separation that have been applied under both the California and U.S. constitutions. The majority opinion stressed that separation of church and state did not require "hostility" toward religion, and it applied a series of tests, which the colleges' bond proposal passed.

The key hurdle for the religious colleges was a test on whether the bonds would—in the majority's words—"serve the public interest and no more than incidentally benefit religion." The majority said that the colleges would pass this test provided that they used the funds for facilities that are not religious in nature and that any educational offerings in these buildings be for instruction that is comparable to that at secular institutions.

"The straightforward assessment . . . is whether the academic content of a religious school's course in a secular subject such as math, chemistry, or Shakespeare's writings is typical of that provided in nonreligious schools," the Supreme Court ruled. The decision went on to say that enforcing this requirement does not require monitoring of what is said in class each day or limit a professor's freedom of speech.

"When a school establishes, through its course descriptions or otherwise, that the academic content of its secular classes is typical of comparable courses at public or other nonreligious schools, it is not necessary to scrutinize the school's say-to-day classroom communications," the ruling said. "The circumstance that a teacher may, in addition to teaching a course's religiously neutral content, express an idea or viewpoint that may be characterized as 'religious' does not result in a benefit to religion that is more than incidental to the state's primary purpose of enhancing secular education opportunities for California residents."

The key, the court said, was to make judgments on the use of the facilities, and not the broad religious goals or identity of a college. Citing previous rulings by their court, the justices noted that fire and police departments provide the same protection for religious institutions as for secular institutions, so there is no automatic ban on government assistance to even the most religious of institutions.

Lawyers involved in the case told California newspapers that they thought the colleges involved—and most religious colleges—would have no difficulty meeting the tests set by the court.

The three judges who dissented said that the majority paid too little attention to the benefits of a government-issued bond to the colleges. By saving money on facilities, even if those are facilities for secular purposes, the colleges gain additional funds to advance their religious missions, the dissent said. In that context, the dissent said, it was relevant just how significantly religion pervades campus rules and programs.

"Given the trial court's uncontested findings that the schools are 'organized primarily or exclusively for religious purposes,' "restrict admission of students by religious criteria,' 'discriminate on the basis of religion in hiring faculty,' and 'integrate religion . . . into classroom instruction,'

the proposed bond agreements clearly violate" the state Constitution's separation of church and state, the dissent said.

The Constitution, the dissent said, "simply does not permit a public entity to act as a fundraiser for schools of this nature." Reported in: insidehighered.com, March 6.

Madison, Wisconsin

In a technical sense, a ruling by a federal judge March 8 handed defeats to both the University of Wisconsin at Madison and to a Roman Catholic group seeking to receive support through student fees at the university. But the fault that the judge found with the Catholic group is one that it can fairly easily fix. On the key issue of legal philosophy, the judge's ruling was very much what the religious students wanted: an order that the university not deny them recognition on the basis of Madison's non-discrimination policy.

The technical issue on which the UW-Madison Roman Catholic Foundation will have to change its policies concerns the university's requirement that all groups be controlled and run by students. Students are only a minority on the foundation's board, although they are a majority of those who elect board members. A lawyer for the foundation said that it could easily change its board structure to deal with that issue. Until it does so, the ruling by Judge John Shabaz will allow Madison to deny it funds.

The judge ruled from the bench, so there was no written decision. But press accounts said that he said the university was "wrong" to apply its non-discrimination rules to religious groups. The judge's ruling did not focus on the use of the funds—more than $250,000 to support a variety of activities, many of them explicitly religious.

David French, a lawyer for the Alliance Defense Fund who represented the foundation in the case, said that there were several other religious groups that have been denied student funds at Madison and that would now push for them. "It's deeply encouraging to see this momentum in the direction of permitting religious students to participate equally," he said.

University of Wisconsin officials have defended their policies as appropriate for a public institution that wants to support the rights of all of its students and that does not want to favor any religious belief or group.

The ruling cited a federal appeals court's finding that Southern Illinois University's law school could not deny recognition to a student group that bars people who do not share certain beliefs from becoming members. Shabaz said the principle in that case—that the religious group has the right to free association—governs the Madison case as well. Reported in: insidehighered.com, March 9.

newspapers

Kansas City, Missouri

A judge has ordered two Kansas City newspapers to remove articles about an area utility from their Web sites and temporarily barred the papers from publishing the story. Jackson County Circuit Judge Kelly Moorhouse issued the temporary restraining order March 2 against *The Kansas City Star,* a daily, and *The Pitch,* a weekly alternative newspaper.

The judge also ordered the papers to remove articles about the Board of Public Utilities (BPU) of Kansas City, Kansas, from their Web sites. Both papers had posted the stories before the order but removed the articles.

Both papers prepared stories about the operations at the BPU based on a confidential document they received. The document was prepared by Stanley Reigel, a Stinson Morrison Hecker attorney working for the utility. The judge's order said the document was privileged legal communication and BPU would be "irreparably harmed" if the newspapers didn't remove the articles from their Web sites.

Moorhouse said the BPU had "a protected interest in its attorney-client privileged information and monetary damages which might result from a publication of such information would be difficult or impossible to measure in money."

Editors from both papers said they would appeal the order. Mark Zieman, editor and vice president of the *Star,* said the public has the right to know about the operations of local utilities. "To have a published story pulled from our Web site is unprecedented and unbelievable," said Zieman. "When justice prevails, we will publish our findings again."

C. J. Janovy, editor of *The Pitch,* said she was "appalled" by the order, and, the paper planned to appeal.

Sam Colville, the *Star's* attorney, said the injunction violated the constitutional rights of the media and also restricted the public's right to be informed. "Every moment the *Star* is restrained constitutes further damage to the constitutional rights of each of us," Colville said. Reported in: editorandpublisher.com, March 3.

government spying

San Francisco, California

A judge overseeing dozens of federal lawsuits challenging the Bush administration's domestic spying program ruled February 20 that he will keep under seal court documents the media was trying to make public. The suits accuse telecommunications companies of illegally coop-

erating with the National Security Agency to make e-mail and telephone communications available to the spy agency without warrants

The Associated Press, *San Francisco Chronicle, Los Angeles Times, San Jose Mercury News,* Bloomberg News, *USA Today,* Lycos Inc., and Wired News had asked U.S. District Judge Vaughn Walker to unseal a declaration by a former AT&T Corp. technician and other documents in the case. Wired.com had published some of the technician's documents, showing that the National Security Agency is capable of monitoring communications on AT&T's network after the NSA installed equipment in secret rooms at AT&T offices in San Francisco, Seattle, San Jose, Los Angeles, and San Diego.

AT&T said the documents involved trade secrets and should remain sealed.

In March 2006, Walker denied a similar motion by the media and did so again, ruling both times that it was premature to disclose that information.

President Bush announced in December 2005 that the NSA has been conducting warrantless surveillance of calls and e-mails thought to involve al-Qaida terrorists following the September 11, 2001, attacks. In January, Bush moved the program under the auspices of a secret tribunal known as the Foreign Intelligence Surveillance Court, but few details were released.

All the cases are largely on hold as the government appeals Walker's decision denying the Bush administration's request to dismiss the case against AT&T. The cases are *In Re: National Security Agency Telecommunications Records Litigation*. Reported in: *San Francisco Chronicle*, February 20.

New York, New York

In a rebuke of a surveillance practice greatly expanded by the New York Police Department after the September 11 attacks, a federal judge ruled February 15 that the police must stop the routine videotaping of people at public gatherings unless there is an indication that unlawful activity may occur.

Four years ago, at the request of the city, the same judge, Charles S. Haight Jr. gave the police greater authority to investigate political, social, and religious groups.

In his new ruling, Judge Haight, of United States District Court in Manhattan, found that by videotaping people who were exercising their right to free speech and breaking no laws, the Police Department had ignored the milder limits he had imposed on it in 2003.

Citing two events in 2005—a march in Harlem and a demonstration by homeless people in front of the home of Mayor Michael R. Bloomberg—the judge said the city had offered scant justification for videotaping the people involved. "There was no reason to suspect or anticipate that unlawful or terrorist activity might occur," he wrote, "or that pertinent information about or evidence of such activity might be obtained by filming the earnest faces of those concerned citizens and the signs by which they hoped to convey their message to a public official."

While he called the police conduct "egregious," Judge Haight also offered an unusual judicial mea culpa, taking responsibility for his own words in a 2003 order that he conceded had not been "a model of clarity."

The restrictions on videotaping do not apply to bridges, tunnels, airports, subways, or street traffic, Judge Haight noted, but are meant to control police surveillance at events where people gather to exercise their rights under the First Amendment.

"No reasonable person, and surely not this court, is unaware of the perils the New York public faces and the crucial importance of the N.Y.P.D.'s efforts to detect, prevent, and punish those who would cause others harm," Judge Haight wrote.

Jethro M. Eisenstein, one of the lawyers who challenged the videotaping practices, said that Judge Haight's ruling would make it possible to contest other surveillance tactics, including the use of undercover officers at political gatherings. In recent years, police officers have disguised themselves as protesters, shouted feigned objections when uniformed officers were making arrests, and pretended to be mourners at a memorial event for bicycle riders killed in traffic accidents.

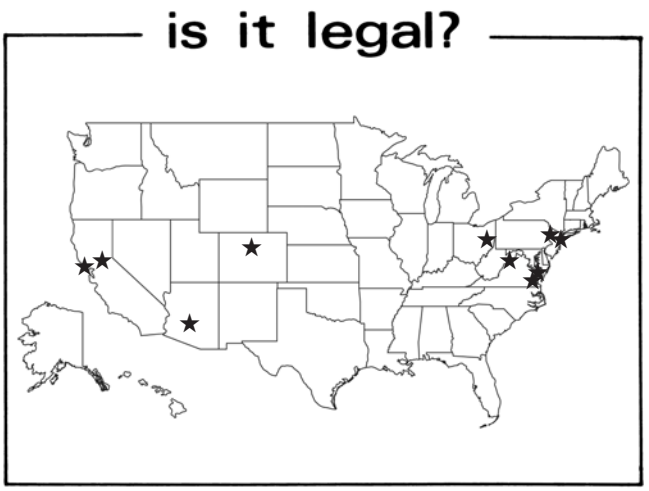
"This was a major push by the corporation counsel to say that the guidelines are nice but they're yesterday's news, and that the security establishment's view of what is important trumps civil liberties," Eisenstein said. "Judge Haight is saying that's just not the way we're doing things in New York City."

A spokesman for Police Commissioner Raymond W. Kelly referred questions about the ruling to the city's lawyers, who noted that Judge Haight did not set a deadline for destroying the tapes it had already made, and that the judge did not find the city had violated the First Amendment.

Nevertheless, Judge Haight—at times invoking the mythology of the ancient Greeks and of Harold Ross, the founding editor of *The New Yorker*—used blunt language to characterize the Police Department's activities.

"There is no discernible justification for the apparent disregard of the guidelines" in his 2003 court order, he said. These spell out the broad circumstances under which the police could investigate political gatherings. Under the guidelines, the police may conduct investigations—including videotaping—at political events only if they have indications that unlawful activity may occur, and only after they have applied for permission to the deputy commissioner in charge of the Intelligence Division.

(continued on page 122)



Library Director Anne Marie Gold told the board that the library also would be purchasing new workstation tables for all branches that recess the monitors beneath shaded glass panels for greater privacy. Gold said that the challenge in developing the policy was to balance the provision of a "safe, welcoming, and comfortable environment" with the principles of open access. "It's not an easy balancing act, and every library in the country is dealing with it," she said. Reported in: *American Libraries* online, March 23.

Richmond, Virginia

Virginia Gov. Timothy M. Kaine signed legislation March 22 requiring the state's public libraries to install Internet filters to block offensive material but allowing adults who are conducting research to have the filters disabled.

The legislation, which passed the House 85-12 and the Senate 31-9, was supported by the conservative Family Foundation of Virginia, which had been calling for such a measure since 2004.

"Now parents, regardless of where they live in Virginia, will soon have the assurance that their children cannot be subjected to cyberporn at their local, neighborhood library," said Senate Majority Leader Walter Stosch (R-Henrico County), who sponsored the bill in the Senate.

Fewer than half of the state's library systems currently have filters installed. Reported in: *American Libraries* online, March 23.

libraries

Sacramento, California

The authority board of the Sacramento Public Library adopted an Internet use policy March 22 intended to balance the protection of children with the right of adult patrons to view potentially offensive materials. The new policy appeared to please none of the twelve-member board, comprised of members of the board of supervisors and city council, and other city officials: some felt it should have banned the viewing of pornography on library computers, while others worried that it violated First Amendment protections. One member described the policy as "squishy as warm cinnamon cookies."

The new policy, which replaces one adopted in 2004, offers filtered access as a default, but unfiltered access can be requested "on a per session basis," although patrons under age seventeen must obtain parental consent. It states that because the workstations are in public areas, "the Library asks that each user exercise good judgment and consideration of others." If staff see materials "that would interfere with the maintenance of a safe, welcoming, and comfortable environment for the public, the Internet user will be asked to end a search or change a screen."

schools

Napa, California

Strict dress codes are common at many public schools in California, but Toni Kay Scott, 14, says her school crossed a constitutional line when it punished her for wearing knee socks with the Winnie-the-Pooh character Tigger.

"I've been dress coded many times for little things," said Scott, an honor student at Redwood Middle School in Napa. "Like wearing a shirt with a little Dickies or butterfly logo the size of my thumb."

Scott is among six students who have filed a lawsuit against the school and the Napa Valley Unified School District saying the dress code is "unconstitutionally vague, overbroad and restrictive." Filed March 19 in Napa Valley Superior Court, the suit says the dress code violates the First and Fourteenth Amendments by creating an "aesthetic conformity in the name of safety."

The dress code forbids students to wear certain colors and apparel with writing, insignia, pictures, words, and letters. It was largely intended do away with gang-related and other provocative symbols. John Glaser, the district superintendent, said the policy was eight years old and had been reviewed for relevance during the 2005–2006 school year.

"We wanted to make sure it still had the support of the community," Mr. Glaser said. "The district concluded and believes the Appropriate Attire Policy is serving the needs of the community, particularly the academic needs of that school."

Scott has been reprimanded or cited for dress code violations about twelve times in the past year and a half, most recently in February. In one instance, she said, she had been sent home for wearing a drug prevention T-shirt.

"Even if nothing happens before I get out of school, this is for everyone else," Scott said of the lawsuit, which also lists the students' parents, all plaintiffs in a complaint filed by a law firm in San Francisco and the American Civil Liberties Union of Northern California. She added, "We don't want anyone to have their rights to freedom of expression limited."

Glaser said the district encourages free expression, but suggested, "There are other ways to express your individuality in an academic environment." Reported in: *New York Times*, March 22.

Kearny, New Jersey

The Kearny High School teacher who is the subject of a potential lawsuit regarding proselytizing in a public high school history class denied on February 20 that he had preached in class and said that the student who taped him had never expressed discomfort to him about his comments.

The teacher, David Paszkiewicz, 38, spoke for the first time with reporters about the controversy outside a school board meeting during which the board took the first step toward approving a policy that specifically requires teachers to "refrain from advocating one religion."

The student, Matthew LaClair, 16, recorded the teacher's history classes in September after, he said, he became uncomfortable with the religious nature of the discussions in class. He has said that he felt his criticisms of the popular teacher would not be believed otherwise.

Matthew brought his concerns to school officials, and they took corrective action against the teacher, which Paszkiewicz called "a reprimand."

After the tapes became public, Matthew said, he had little support from other students. He received a death threat and has been bullied, he said.

Demetrios K. Stratis, Paszkiewicz's lawyer, told reporters that Matthew's questions in class led the teacher down a path. "It doesn't defy common sense to say he was set up," Stratis said before the board meeting, which was attended by about 150 people. Matthew has said that he did not initiate any of the classroom conversations about religion.

In the recordings, Paszkiewicz said of Jesus, "If you reject his gift of salvation, then you know where you belong." He also said: "He did everything in his power to make sure that you could go to heaven, so much so that he took your sins on his own body, suffered your pains for you, and he's saying, 'Please, accept me, believe.' If you reject that, you belong in hell."

In other comments, he is recorded saying that dinosaurs were on Noah's ark, and that the Big Bang and evolution were not based on science.

But Paszkiewicz insisted, "I'm very careful to follow the guidelines and stick with the curriculum." As for the recordings, he said, "I really wish the entire world would listen to them."

Some of the teacher's supporters last night carried signs that said, "Jesus Saves." One man carried a sign that equated the American Civil Liberties Union with the Anti Christian Liberties Union.

On February 19, the LaClair family, the American Civil Liberties Union, and the People for the American Way Foundation announced the family's intent to sue the school district if their complaints are not resolved.

Matthew and his parents, Paul and Debra LaClair, are asking for an apology to Matthew and for public corrections to some of the statements Paszkiewicz made in class.

Matthew told the board, "During the whole time, I've been harassed and bullied, and you've done nothing to defend me; you make it look like I've done something wrong."

The LaClairs filed a torts claim notice on February 13 against the school board, Paszkiewicz, and other school officials. Such a claim is required before a lawsuit can be filed in New Jersey. "The school created a climate in which the students in the school community held resentment for Matthew," said Deborah Jacobs, executive director of the ACLU in New Jersey. She said Kearny High School had "violated the spirit and the letter of freedom of religion and the First Amendment."

Richard Mancino, a partner with Willkie Farr & Gallagher, which is representing the family, said he did not understand why school officials would not "stand up for this student, who had the guts to raise this constitutional issue." Instead, Mancino said, they appear "to have adopted a shoot-the-messenger policy."

Angelo J. Genova, a lawyer in Livingston, N.J., who is representing the school board, said Kearny school officials had addressed Matthew's complaints and had reaffirmed their commitment to the separation of church and state in the classroom.

Bernadette McDonald, president of the school board, said in a statement: "We took his concerns very seriously. The result was that we have received no further complaints about such religious proselytization in our schools."

Genova said the school board had hired Edwin H. Stier, who was director of the New Jersey Division of Criminal Justice from 1977 to 1982, to independently investigate Matthew's harassment allegations.

For his part, Matthew said he recognized that "there are going to be a lot of consequences'' at school. He said he had already felt hostility from students after the school switched his history class from Paszkiewicz to another teacher.

The district would not disclose what action it had taken against Paszkiewicz, who is teaching the same course to a different group of students. He has taught in the district for fourteen years. Reported in: *New York Times*, February 20, 21.

colleges and universities

Phoenix, Arizona

To date, 2007 hasn't seen much legislative progress for measures inspired by the "Academic Bill of Rights," the brainchild of David Horowitz that he says promotes diversity of thought on campuses, but that many faculty leaders believe is designed to squelch them. Bills have been introduced in nine states, according to Free Exchange on Campus, which opposes them. But with one exception, those bills haven't been moving.

The exception is Arizona, where a Senate committee on February 15 approved a bill that would go much further than the Academic Bill of Rights, and which has infuriated faculty and student leaders. The bill, whose chief sponsor is the Republican majority leader in the Senate, would ban professors at public colleges and universities, while working, from endorsing, supporting, or opposing any candidate for local, state, or national office; endorsing, supporting, or opposing any pending legislation, regulation, or rule under consideration by local, state, or federal agencies; endorsing, supporting, or opposing any litigation in any court; advocating "one side of a social, political, or cultural issue that is a matter of partisan controversy"; or hindering military recruiting on campus or endorsing the activities of those who do.

Under the legislation, the Arizona Board of Regents, which governs the state's public universities, and the individual boards of community colleges would be responsible for setting guidelines for the law and for requiring all faculty members to participate in three hours of training annually on their responsibilities under the law.

Punishments could come in two forms. The governing boards' guidelines would need to develop procedures, including suspensions and terminations in some cases, according to the bill. In addition, the state attorney general and county prosecutors could sue violators, and state courts could impose fines of up to $500. The legislation would bar colleges or their insurance policies from paying the fines—money would need to be paid directly by the professors found guilty.

It was unclear whether the legislation has the backing to become law. It was approved by the Senate Government Committee, on a 4-3 party line vote, amid reports that the Education Committee wasn't prepared to support the legislation. Given that the sponsor of the legislation, Sen. Thayer Verschoor, is Republican majority leader, the legislation is being taken as a real threat—even by those who expect it to be defeated at some point.

"This is a censorship bill. We are obviously very opposed," said Reyes Medrano Sr., president-elect of the Maricopa Community College District Faculty Association and a business professor at Paradise Valley Community College. "We can't see what this bill would accomplish." He added that the group was stepping up lobbying efforts against the legislation, and would consider court action if the bill becomes law. "There is plenty to work with there," he said.

Serena Unrein, executive director of the Arizona Students' Association, said that the bill would prevent faculty members from discussing many things that belong in the classroom. "There are so many examples—an economics professor couldn't talk about the viability of privatizing Social Security. Any time that there are efforts to restrict what college students are able to learn in the classroom, we should take it seriously."

The blog College Freedom has said the bill, if enacted, would be "the worst legislative attack on academic freedom in the history of American higher education." Even David Horowitz is opposed, saying that the bill goes too far. He wrote in a statement that he has never advocated legislative limits on what college faculty members may say in class.

Verschoor defended his bill and pledged to push it. "In our institutions of higher education, students should be learning how to think, not what to think," he said. Verschoor said that there has been "a problem for quite a while" with professors imposing politics on their students. He said that he hears about this all the time and reads newspaper articles about it all the time.

Asked for specifics of the professorial behavior his bill would ban, he cited two examples from his own education at Arizona State University, from which he graduated in 1993. One time, he said, a classroom where his course met was next door to a classroom used by a women's studies class, which he entered one day by accident. "I came in and all of the male students were dressed like women, and the purpose was supposedly to see how a woman feels. I don't know how being in a dress and high heels would help with that. That was peculiar," he said.

In another case, he said, his comments offended a professor's political sensibilities. While Verschoor did not remember the specifics of the political exchange or the class, he said that the professor accused him of being "a political plant" and then said that "plants are to be urinated on."

Verschoor said that his intentions were not partisan and said that he had heard that some professors had criticized

Sen. John Kerry in classes, and that he was offended by that as well as comments made against President Bush. He also denied that the bill had anything to do with academic freedom. "You can speak about any subject you want—you just don't take a position," he said. Reported in: insidehighered.com, February 22.

New York, New York

The reverberations from October's fracas involving the disruption of a speech being given at Columbia University by an anti-illegal immigrant activist may gradually be coming to an end—but not without a little more controversy. On March 26, at least three students charged with violations of the university's rules of conduct were notified that decisions had been handed down. So far, the disciplinary actions are as lenient as university rules allow, bringing a range of reactions.

The students who came forward with their decision letters all were found to have had "simple" violations, which one characterized as "a slap on the wrist." All three were found to have disrupted the lecture and aided others in doing so; one was additionally found guilty of "engaging in a protest on the stage of the auditorium that placed others in danger of bodily harm." The sanctions are classified as "disciplinary warnings" that will remain on the students' transcripts until December 31, 2008. There are no actual punishments associated with the warnings. Eight students have received such decisions, with some sanctions rising to the level of "censure," but none of which would remain on students' records past graduation if they do not violate additional rules.

The warnings didn't come entirely by surprise. David Judd, president of Columbia's chapter of the International Socialist Organization and one of the protesters who received a warning, said it was "exactly what I was anticipating." If the verdicts have generated some relief for the students involved, they angered the group that had its event disrupted: the Minuteman Project, a radical anti-immigrant group whose founder, Jim Gilchrist, was the one who tried to speak at Columbia.

Both Gilchrist's group and the student protesters claim the other side instigated the scuffle. The national spokesman for the Minuteman Project, Tim Bueler, referred to the disciplinary actions as a "whitewash" and contrasted the reception at Columbia with similar events at other universities. "If they keep going down this route, in the eyes of the public, they will lose their credibility," he said. Columbia has apologized for the incident and refunded the sponsor of the event, the Columbia College Republicans, for the costs of the speech.

In a statement released March 27, Columbia's president, First Amendment scholar Lee Bollinger, said, "Under the published Rules of University Conduct, Columbia University has a longstanding and very specific process for disciplinary actions involving students. Those independent procedures have been followed in cases arising out of the events of last October 4. If the rule of law is to mean anything, it is vital that we respect the results of the system of rules we live under."

The incident, caught on tape and viewed widely on video services such as YouTube, gained national attention for its volatile mix of controversial issues such as immigration and the boundaries of free speech on a private university campus. At the time, Bollinger minced no words in his public statement, saying, "No one . . . shall have the right or the power to use the cover of protest to silence speakers. This is a sacrosanct and inviolable principle."

Students involved in the protests see the issue differently. They have consistently defended their actions as fighting hate speech, not free speech. In an op-ed in *Spectator,* the student paper, Judd expressed concern about what he perceived as an unfair campus judicial process whose results will have "serious material impact" on his and other students' future and create a "broader chilling effect" on campus.

The Foundation for Individual Rights in Education, a group that defends free expression on college campuses, isn't convinced by the argument. "It was an attempt to silence a controversial speaker," said FIRE's president, Greg Lukianoff. "I don't think there's any doubt about that, and attempts to make it look any other way have looked pretty foolish." Reported in: insidehighered.com, March 28.

Hampton, Virginia

For the second time in two years, Hampton University has denied official recognition to students seeking to start a gay and lesbian group on campus. The group, Students Promoting Equality, Action, and Knowledge (SPEAK), contacted the Foundation for Individual Rights in Education (FIRE), which is calling on Hampton to either explain or reverse its decision.

"Denying students the right to form an organization is a serious action, and warrants a serious explanation," FIRE President Greg Lukianoff said. "Hampton's silence on the decision has left students, alumni, and the public wondering whether the denial was legitimate, or a sign that some groups are not welcome at Hampton."

SPEAK applied for recognition on September 11, 2006. The group's proposed constitution states that its mission is to "serve as a bridge between the Gay, Lesbian, Bisexual, Transgender and Straight communities of Hampton University," with the purpose of "providing a safe place for students to meet, support each other, talk about issues related to sexual orientation, and work to end homophobia." On December 20, Interim Director of Student Activities Patra Johnson issued a letter denying SPEAK official rec-

ognition. Johnson offered no explanation of this decision, writing simply, "[y]our organizations [sic] proposal was not selected at this time."

Hampton is a private, non-sectarian, historically black institution with a stated commitment to "prohibit[ing] discrimination, while striving to learn from differences in people, ideas, and opinions." Hampton's Code of Conduct, section 4, says "[e]ach member of the Hampton Family will support equal rights and opportunities for all regardless of age, sex, race, religion, disability, ethnic heritage, socio-economic status, political, social, or other affiliation or disaffiliation, or sexual preference."

Yet no gay and lesbian organization exists at Hampton, even though student organizers report that fifty-four students expressed an interest in joining SPEAK. Hampton also denied recognition to a gay and lesbian group two years ago, and Hampton policies, as referenced in Johnson's letter to SPEAK, state that student organizations denied recognition are not permitted to reapply for another two years.

Concerned students contacted FIRE, which wrote a letter to Hampton on February 7 urging the university to recognize SPEAK or provide an adequate explanation for effectively banning the group from campus for the next two years. FIRE's letter pointed out that although Hampton is a private university, "[t]he Code of Conduct's guarantee of equal treatment is not only a goal toward which the university should aspire, but a promise that Hampton has made to its students." Hampton has not replied to FIRE's letter.

"Hampton's silence surrounding this denial means that students have no idea what, if anything, they can do to gain recognition the next time around," Lukianoff said. "If Hampton is limiting freedom of association on campus, it needs to make that clear in its promotional materials. Hampton should not hold itself out to be a college that respects freedom of association and instead deliver selective repression. Hampton's students deserve to know the full extent of their rights on their own campus."

FIRE has intervened at Hampton before: in December 2005, students were punished for handing out literature, including anti-Bush flyers, outside the student union without university approval. FIRE wrote a letter to Hampton in that case as well, and the flyer-distributors, originally threatened with expulsion, were sentenced to community service. Reported in: FIRE Press Release, February 22.

protest

Denver, Colorado

Two people who were removed from a presidential event in 2005 filed a lawsuit March 16 against three White House staff members on the grounds that their rights to free speech had been violated.

The two, Leslie Weise and Alex Young, were ejected from a speech given in Denver by President Bush because they arrived in a car with an antiwar bumper sticker, despite having done nothing disruptive, according to the ACLU of Colorado, which is representing them.

The lawsuit names Steven A. Atkiss, James A. O'Keefe, and Greg Jenkins, all of whom worked for the Office of Presidential Advance at the time, as being responsible for the removal. Weise and Young filed an initial lawsuit in 2005 against two other individuals working at the speech. Reported in: *New York Times*, March 17.

access to information

Washington, D.C.

More than a million pages of historical government documents—a stack taller than the U.S. Capitol—have been removed from public view since the September 2001 terrorism attacks, according to records obtained by The Associated Press. Some of the papers are more than a century old.

In some cases, entire file boxes were removed without significant review because the government's central record-keeping agency, the National Archives and Records Administration, did not have time for a more thorough audit.

"We just felt we couldn't take the time and didn't always have the expertise," said Steve Tilley, who oversaw the program. Archives officials still are screening records, but the number of files pulled recently has declined dramatically, he said.

The records administration began removing materials under its "records of concern" program, launched in November 2001 after the Justice Department instructed agencies to be more guarded in releasing government papers. The agency has removed about 1.1 million pages according to partially redacted monthly progress reports obtained under the Freedom of Information Act.

The pulled records include the presumably dangerous, such as nearly half a database from the Federal Emergency Management Agency with information about all federal facilities. But they also include the presumably useless, such as part of a collection about the Lower Colorado River Authority that includes 114-year-old papers.

In all, archivists identified as many as 625 million pages that could have been affected under the security program. In their haste to remove potentially harmful documents from view, archives officials acknowledged many records were withdrawn that should be available.

The archives program comes less than one year after the records administration came under fire for allowing public documents to be reclassified as secret under a separate

program.

After the September 2001 attacks, the records administration signed a secret deal with the Pentagon and CIA to review and permit the removal of tens of thousands of pages from public view that intelligence officials thought had been declassified too hastily.

The director of an online coalition for freedom of information issues, Patrice McDermott of OpenThe Government.org, urged officials to create a public registry of withdrawn documents. She said officials should work toward releasing more than 400 million pages of backlogged files rather than removing smaller numbers of papers.

"This is a questionable use of tax dollars," McDermott said.

Other researchers said the project, while well-intentioned, reinforces a culture of secrecy that became more pronounced after the September 2001 terror attacks.

"You want government to be vigilant when it comes to security, but you also want them to behave responsibly," said Steven Aftergood, who runs the government secrecy project for the Washington, D.C.-based Federation of American Scientists. "You can't have a situation where secrecy becomes the default mode."

Many of the removed records might be useful to terrorists. Archivists removed records from the U.S. Surgeon General's Preventive Medicine Division, which studied biological weapons created between 1941 and 1947. Other records withdrawn don't appear to be useful to terrorists. Archivists removed information from a 1960 Bureau of Indian Affairs report on enrollments in the Alaska's Tlingit and Haida tribes because it included Social Security numbers, which could be used for identity theft.

Archives officials generally have received passing marks from secrecy experts who have been aware of the program, said Tom Blanton, the director of the National Security Archive, a George Washington University-based research institute. But Blanton also said the effort appears to be a case of misplaced priorities. "Government's first instinct is to hide vulnerabilities, not to fix them," said Blanton. "And that doesn't make us safer." Reported in: *Salem Statesman-Journal*, March 14.

Washington, D.C.

The director of the Congressional Research Service issued a memo March 20 requiring prior approval from high-level staff before the agency's reports can be given to members of the public. Daniel P. Mulhollan stated, "To avoid inconsistencies and to increase accountability, CRS policy requires prior approval at the division level before products can be disseminated to non-congressionals."

Although access to the CRS database is restricted to Congress, journalists, researchers, and government officials have been able to request specific reports from the agency. Mulhollan's memo continues to permit such requests, but "prior approval should now be requested at the division or office level."

However, it adds, "Product requests can also originate from other non-congressional sources, including individual researchers, corporations, law offices, private associations, libraries, law firms, and publishers. The Inquiry Section typically declines these requests, and most often refers the caller to his or her congressional representative's office." Requests will now be honored only when "it can be demonstrated that the distribution benefits the Congress by assisting CRS in its work" through reciprocity for information-sharing, peer review, or expert opinion.

Mulhollan's memo was reported by the Federation of American Scientists' *Secrecy News* Web site. A CRS analyst told *Secrecy News* that the new policy demonstrates that "this is an organization in freefall," adding, "We are now indeed working for Captain Queeg." Another staffer said, "There's not a day that goes by that I don't talk to someone in another agency, another organization, or someone else outside of Congress and we share information. Now I can't do that?"

For years, members of Congress and open-government groups have called for CRS's taxpayer-funded research to be made more widely available. In 2003, Senators John McCain (R-AZ) and Patrick Leahy (D-VT) reintroduced legislation to make CRS documents available to the public online, and in 1998 the American Library Association passed a resolution urging CRS to distribute its reports through the Federal Depository Library Program and on the Internet. Reported in: *American Libraries* online, March 23.

Washington, D.C.

In December 1989, one month after the fall of the Berlin Wall, President George H. W. Bush and Mikhail Gorbachev met in Malta and, in the words of a Soviet spokesman, "buried the cold war at the bottom of the Mediterranean." The Russian transcript of that momentous summit was published in Moscow in 1993. Fourteen years later American historians are still waiting for their own government to release a transcript.

Now lawmakers and scholars are hoping to pry open the gateway to such archival documents by lifting what they say has been a major obstacle to historical research: a directive issued by the current Bush White House in 2001 that has severely slowed or prevented the release of important presidential papers.

"I visited the Bush library in 1999, expecting to be able to look at" the Malta transcript, said Thomas S. Blanton, executive director of the National Security Archive, an independent research institute at George Washington University. He filed a Freedom of Information Act request but said, "I

still don't have it, and there's no telling when I will.''

President George W. Bush's 2001 executive order restricted the release of presidential records by giving sitting presidents the power to delay the release of papers indefinitely, while extending the control of former presidents, vice presidents, and their families. It also changed the system from one that automatically released documents thirty days after a current or former president is notified to one that withholds papers until a president specifically permits their release.

On March 8, the House Committee on Oversight and Government Reform discussed a new bill that would overturn Bush's order. The sponsors, who include the committee chair, Henry A. Waxman (D-CA), hope to bring the bill to the floor of the House soon.

Allen Weinstein, the archivist of the United States, said that the order was not being used to prevent presidential papers from reaching the public, but that obviously "it has been increasing the time and delays, which are endemic.'' The backlog of requests for documents now extends up to five years.

To Weinstein, the biggest problem is the lack of resources and trained archivists. Every former president has brought a new flood of documents and prompted an increase in requests for them. Meanwhile, a recent budget freeze has reduced the overall number of positions. Weinstein said his staff was working on ways to improve efficiency, such as packaging similar types of requests together.

Blanton blamed the archive's previous leadership for initially failing to respond to added pressures on the system. But he made clear that the latest executive order has significantly worsened the problem. At a congressional hearing, he said that waiting time at the Reagan Presidential Library had increased to six-and-a-half years from eighteen months in 2001.

"There was a fair, reasonable, orderly, clear, sensible and workable process for presidential records in place during the 1990s,'' which Bush's executive order "overturned and replaced with the opposite,'' Blanton testified. It "is not just wrong, it's stupid.''

The 1978 Presidential Records Act, part of the post-Watergate reforms, clearly gave the American public ownership of presidential papers, said the historian Robert Dallek, whose latest book, *Nixon and Kissinger: Partners in Power,* was published in March. But Bush's executive order, he said, has had the effect of returning ownership to presidents and their heirs.

Having written highly regarded histories of Franklin D. Roosevelt, John F. Kennedy, Lyndon B. Johnson, and Ronald Reagan, Dallek said "my experience has been, particularly with this new book, that there is a very different story to be told than a president and his representatives would like you to hear when you get to get inside and read the records.''

He mined archives to put together his new book, which reveals that Henry A. Kissinger and Richard M. Nixon discussed early on the impossibility of winning the Vietnam War, as well as such unguarded moments as Kissinger referring to the South Vietnamese as "little yellow friends.''

Presidents and the guardians of their legacies would prefer that such embarrassing details don't come out, Dallek said. But archival evidence provides a "much more candid, honest picture of what they were thinking and what they were saying and the acts of deception they practiced,'' he said. "It is important for the country to hear and know.''

The release of presidential papers and telephone transcripts have often transformed the way the public and scholars think of presidents. The presidential scholar Fred I. Greenstein used original staff notes of discussions to argue that Dwight D. Eisenhower, far from being ineffectual and uninvolved, was a remarkably engaged president who carefully orchestrated strategy during his two terms.

Documents that gave a clearer view of the extent of Woodrow Wilson's and John F. Kennedy's debilitating illnesses—diligently concealed during their terms and after their deaths—have influenced the way people think about candidates' physical and mental health, as well as the transfer of power in case a president is severely impaired. Blanton said he believes the Bush White House is primarily concerned with reversing what it sees as an erosion of presidential power after Watergate. "It has the added advantage of giving the incumbent a lot more control over history,'' he said.

Whether he is right about the Bush administration's motives, though, is something no one will know until the president's own papers are released—whenever that might be. Reported in: *New York Times*, March 8.

national security

Washington, D.C.

Private businesses such as rental and mortgage companies and car dealers are checking the names of customers against a list of suspected terrorists and drug traffickers made publicly available by the Treasury Department, sometimes denying services to ordinary people whose names are similar to those on the list.

The Office of Foreign Asset Control's list of "specially designated nationals" has long been used by banks and other financial institutions to block financial transactions of drug dealers and other criminals. But an executive order issued by President Bush after the September 11, 2001, attacks has expanded the list and its consequences in unforeseen ways. Businesses have used it to screen applicants for home and car loans, apartments, and even exercise equipment, according to interviews and a report by the

Lawyers' Committee for Civil Rights of the San Francisco Bay Area issued March 28.

"The way in which the list is being used goes far beyond contexts in which it has a link to national security," said Shirin Sinnar, the report's author. "The government is effectively conscripting private businesses into the war on terrorism but doing so without making sure that businesses don't trample on individual rights."

The lawyers' committee has documented at least a dozen cases in which U.S. customers have had transactions denied or delayed because their names were a partial match with a name on the list, which runs more than 250 pages and includes 3,300 groups and individuals. No more than a handful of people on the list, available online, are U.S. citizens.

Yet anyone who does business with a person or group on the list risks penalties of up to $10 million and ten to thirty years in prison, a powerful incentive for businesses to comply. The law's scope is so broad and guidance so limited that some businesses would rather deny a transaction than risk criminal penalties, the report finds.

"The law is ridiculous," said Tom Hudson, a lawyer in Hanover, Maryland, who advises car dealers to use the list to avoid penalties. "It prohibits anyone from doing business with anyone who's on the list. It does not have a minimum dollar amount. . . . The local deli, if it sells a sandwich to someone whose name appears on the list, has violated the law."

Molly Millerwise, a Treasury Department spokeswomen, acknowledged that there are "challenges" in complying with the rules, but said that the department has extensive guidance on compliance, both on the OFAC Web site and in workshops with industry representatives. She also said most businesses can root out "false positives" on their own. If not, OFAC suggests contacting the firm that provided the screening software or calling an OFAC hotline.

"So the company is not only sure that they are complying with the law," she said, "but they're also being good corporate citizens to make sure they're doing their part to protect the U.S. financial system from abuse by terrorists or [weapons] proliferators or drug traffickers."

Tom Kubbany is neither a terrorist nor a drug trafficker, has average credit and has owned homes in the past, so the Northern California mental-health worker was baffled when his mortgage broker said lenders were not interested in him. Reviewing his loan file, he discovered something shocking. At the top of his credit report was an OFAC alert provided by credit bureau TransUnion that showed that his middle name, Hassan, is an alias for Ali Saddam Hussein, purportedly a "son of Saddam Hussein."

The record is not clear on whether Ali Saddam Hussein was a Hussein offspring, but the OFAC list stated he was born in 1980 or 1983. Kubbany was born in Detroit in 1949.

Under OFAC guidance, the date discrepancy signals a false match. Still, Kubbany said, the broker decided not to proceed. "She just talked with a bunch of lenders over the phone and they said, 'No,'" he said. So we said, 'The heck with it. We'll just go somewhere else.'"

Kubbany and his wife are applying for another loan, though he worries that the stigma lingers. "There's a dark cloud over us," he said. "We will never know if we had qualified for the mortgage last summer, then we might have been in a house now."

Saad Ali Muhammad is an African-American who was born in Chicago and converted to Islam in 1980. When he tried to buy a used car from a Chevrolet dealership three years ago, a salesman ran his credit report and at the top saw a reference to "OFAC search," followed by the names of terrorists, including Osama bin Laden. The only apparent connection was the name Muhammad. The credit report, also by TransUnion, did not explain what OFAC was or what the credit report user should do with the information. Muhammad wrote to TransUnion and filed a complaint with a state human rights agency, but the alert remains on his report, Sinnar said.

Colleen Tunney-Ryan, a TransUnion spokeswoman, said in an e-mail that clients using the firm's credit reports are solely responsible for any action required by federal law as a result of a potential match, and that they must agree they will not take any adverse action against a consumer based solely on the report.

The lawyers' committee documented other cases, including that of a couple in Phoenix who were about to close on their first home only to be told the sale could not proceed because the husband's first and last names—common Hispanic names—matched an entry on the OFAC list. The entry did not include a date or place of birth, which could have helped distinguish the individuals.

In another case, a Roseville, California, couple wanted to buy a treadmill from a home fitness store on a financing plan. A bank representative told the salesperson that because the husband's first name was Hussein, the couple would have to wait seventy-two hours while they were investigated. Though the couple eventually received the treadmill, they were so embarrassed by the incident they did not want their names in the report, Sinnar said.

James Maclin, a vice president at Mid-America Apartment Communities in Memphis, which owns 39,000 apartment units in the Southeast, said the screening has become "industry standard" in the apartment rental business. It began about three years ago, he said, spurred by banks that wanted companies they worked with to comply with the law.

David Cole, a Georgetown University law professor, has studied the list and at one point found only one U.S. citizen on it. "It sounds like overly cautious companies have

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libraries

Delta Junction, Alaska

On February 13, the Delta Library Board voted 5-2 to retain a painting hanging in the Delta Junction library. The 1912 painting by Frenchman Paul Chabas titled *September Morn,* features a nude woman up to her ankles in water in front of a natural mountainous setting. The painting was donated by long-time Delta resident and past library board member Robert Stock. Stock hung the painting on the wall the night before the dedication of the city hall/library complex in 1988.

The painting generated controversy in 2000, and the library board received comments from several area residents concerning its display. The board decided that the painting did not meet the Supreme Court's three-part test for being legally obscene or pornographic. The sitting board voted for it to remain on the wall.

On January 23, the board heard public comments on the painting. Lisa Noble, the woman who brought the issue to hearing, said that while she fully appreciates art and literature, "I have a choice to pull out a book and look at that type of art if I want to. But this painting is out in the open." She asked that the painting be "removed from public view but not removed from the library."

While there were supporters for the removal of the painting, the majority of those voicing comments were in favor of keeping the painting up, citing concerns about censorship or the value of art in the community. A few suggested the painting be moved to the back of the library in the Alaskana section, where it wouldn't be so easily seen by children, or moved into a staffing room. Reported in: *Delta Wind*, December 21, February 1.

Marshall, Missouri

The board of the Marshall Public Library approved a new policy on materials selection at its March 14 meeting and agreed to put two coming-of-age graphic novels back on the shelves. Trustees had set up a committee last October to create a selection policy in the wake of a challenge by Marshall resident Louise Mills over the appropriateness of *Fun Home* by Alison Bechdel and *Blankets* by Craig Thompson, which were pulled from circulation until guidelines were established.

The only dissenting vote among the eight board members came from Treasurer Connie Grisier, who opposed the policy because it did not have a provision for labeling materials. The board also voted to place *Blankets* in the adult book section, rather than the young adult area, where it had been shelved before. Library Director Amy Crump said that the novel was originally put in the teen section because of the protagonist's age, but that it is commonly categorized as adult fiction. *Fun Home* was returned to the adult section.

"I think we have tried really, really hard to be fair to all sides," Board President Anita Wright said after the decision. "We put in a lot of safeguards and [we] hope not to find ourselves back in this position." Reported in: *American Libraries* online, March 16.

schools

Howell, Michigan

County Prosecutor David Morse has decided that assignment of several controversial books to advanced English students at Howell High School is not a violation of any criminal laws. In response to a request from Vicki Fyke, president of the Livingston Organization for Values in Education, or LOVE, the county's top law enforcement official reviewed the books to see whether laws against distribution of sexually explicit materials to minors had been broken.

Morse's answer was a blunt "No," for two reasons. First, teachers assigning books that have been OK'd by the school board are exempt from prosecution, Morse said in a letter to Fyke.

"Since the school board has approved use of these books, the teachers and administrators have complied with the school code and are excepted from criminal prosecution under the statute," he wrote.

Furthermore, even if the teachers weren't exempt, the books—including *Black Boy* by Richard Wright, *The Bluest Eye* by Nobel Prize winner Toni Morrison, and *The Freedom Writers Diary* by Erin Gruwell—did not meet the criminal standard of being harmful to minors because the sexually explicit scenes that Fyke and others objected to did not only appeal to readers' prurient interest in sex, and the books as a whole have substantial literary merit.

"After reading the books in question, it is clear that the explicit passages illustrated a larger literary, artistic or political message and were not included solely to appeal to the prurient interests of minors," Morse wrote. "Whether these materials are appropriate for minors is a decision to be made by the school board, but I find that they are not in violation of the criminal laws."

Howell Public Schools Superintendent Chuck Breiner said Morse's ruling was an affirmation that the district is operating the right way. "I think he has absolved our school district, teachers, administration, our process, and our Board of Education in their recommendation of books that do have overall literary merit for study by students in our system," he said.

"We should be very careful about dismissing literary works because they test our belief system or challenge our values," he added.

Morse said that it was pretty clear that the books in question—which also included *Slaughterhouse Five* by Kurt Vonnegut and *Running with Scissors* by Augusten Burroughs—have literary merit. "It was fairly obvious . . . those values were in there," he said.

The issue roused the passions of local residents, attracting more than one hundred people to two different school board meetings. The Board of Education voted 5-2 February 12 to keep the books in place.

The books controversy also attracted the attention of several state and national groups. The Michigan chapter of the American Family Association had given Fyke some legal advice before she sent the letter to Morse. The National Coalition Against Censorship and the American Booksellers Foundation for Free Expression came out against LOVE's objections.

The reinstatement of *The Freedom Writers Diary,* pulled from the curriculum in December, came in a 5-2 vote during a packed Board of Education meeting February 12. It was the last step in returning the book to the Howell High School curriculum.

"It was wonderful," said board president Sue Drazic of the book. "It teaches tolerance and diversity."

Parent Kim Witt backed the board's decision. "Many of these books have been part of the curriculum process for a long time," she said.

The book is a true story of a high school teacher in Long Beach, California, who educates "unteachable" kids through the use of first-person books, such as *The Diary of Anne Frank*. There will be other options for students whose parents are not comfortable with the book, said Jeanne Farina, assistant superintendent for curriculum.

Board members Wendy Day and Phil Westmorland opposed reinstating the book. "There are a million books to choose from," Day said. "Make a better choice."

The American Booksellers Foundation for Free Expression (ABFFE) and the National Coalition Against Censorship (NCAC) welcomed the decision. "The Board made the right decision, from an educational and constitutional perspective, in supporting students' freedom to read and the school's professional selection and review process for curriculum materials," NCAC Executive Director Joan Bertin said. "We are pleased that students in Howell will continue to be able to read these acclaimed works of literature in their classes." Reported in: *Detroit News*, February 13; *Livingston Daily Press and Argus*, March 6. □

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started checking the list in situations where there's no obligation they do so and virtually no chance that anyone they deal with would actually be on the list," he said. "For all practical purposes, landlords do not need to check the list."

Still, Neil Leverenz, chief executive of Automotive Compliance Center in Phoenix, a firm that helps auto dealers comply with federal law, said he spoke to the general manager of a Tucson dealership who tearfully told him that if he had known to check the OFAC list in late summer of 2001, he would not have sold the car used by Mohamed Atta, who went on to fly a plane into the World Trade Center. Reported in: *Washington Post*, March 28.

New York, New York

The FBI's expanded use of national security letters originated in New York City after the September 11 attacks, and is being challenged by a small Internet service provider in New York who is under a gag order barring him from talking about the case.

The lawsuit is believed to be one of only two constitutional challenges to the PATRIOT Act provisions that have dramatically broadened the FBI's authority to gather confidential information about thousands of Americans in the effort to hunt terrorists.

The identity of the small businessman is under government seal, as are those of tens of thousands of individuals who have been served with requests for information that the FBI calls "national security letters"—de facto administrative subpoenas for phone, bank, credit card, and Internet records that can be used in anti-terror probes.

But the lawsuit, expected to be heard in April in federal district court in Manhattan, is getting renewed attention against the backdrop of a report by the Justice Department's inspector general that the FBI engaged in widespread misuse of its authority in issuing more than 143,000 requests for information on thousands of Americans and foreigners between 2003 and 2005 (see page 85).

Based on a sampling of files from four FBI offices—including New York—the audit found numerous failures to get proper authorization, making of improper requests, and unauthorized collection of records.

"One of the things we've been concerned about, from the beginning is that the blanket secrecy that surrounds the FBI's use of these letters invites abuse," said Jameel Jaffer of the American Civil Liberties Union, who represents the Internet provider. "The inspector general's report describes exactly the kind of abuse we should have expected would happen given the secrecy."

In redacted court papers that identify him only as John Doe, the New York Internet provider said that he believes "the government may be abusing its power by targeting people with politically unpopular views."

"I find it ironic that before I received the NSL [National Security Letters], I freely engaged in political debate on the government's use of the PATRIOT Act," the businessman said in court papers. "But now that I have received one of these letters and I know much more about the way the PATRIOT Act works, I am prevented from talking. My experience . . . has made me feel even more strongly that the public should be able to monitor how the government is using these new powers."

After hearing arguments in the case, a U.S. district court struck down the national security letters provision as unconstitutional in 2004, and the government appealed. But before the appeals court could issue a decision, Congress amended the PATRIOT Act and the case was sent back to district court to consider the constitutionality of the amended law.

In a similar case, the ACLU represented four librarians who were part of a Connecticut consortium served with a demand for records. After the consortium challenged the letter and the accompanying gag order, the FBI abandoned its demands.

On Capitol Hill, lawmakers in both parties warned that reckless use of the PATRIOT Act may lead Congress to rewrite it. If the FBI doesn't correct its mistakes, "you probably won't have NSL authority," said Rep. Dan Lungren (R-CA), a onetime supporter.

FBI General Counsel Valerie Caproni said she took responsibility for the abuses and expected to have them fixed shortly. Reported in: *Newsday*, March 21.

privacy

Washington, D.C.

The Department of Homeland Security is testing a data-mining program that would attempt to spot terrorists by combing vast amounts of information about average Americans, such as flight and hotel reservations. Similar to a Pentagon program killed by Congress in 2003 over concerns about civil liberties, the new program could take effect as soon as next year.

But researchers testing the system are likely to already have violated privacy laws by reviewing real information, instead of fake data, according to a source familiar with a congressional investigation into the $42.5 million program.

Bearing the unwieldy name Analysis, Dissemination, Visualization, Insight, and Semantic Enhancement (ADVISE), the program is on the cutting edge of analytical technology that applies mathematical algorithms to uncover hidden relationships in data. The idea is to troll a vast sea of

information, including audio and visual, and extract suspicious people, places, and other elements based on their links and behavioral patterns.

The privacy violation, described in a Government Accountability Office report that is due out soon, was one of three by separate government data mining programs, according to the GAO. "Undoubtedly there are likely to be more," GAO Comptroller David M. Walker said in a recent congressional hearing.

The violations involved the government's use of citizens' private information without proper notification to the public and using the data for a purpose different than originally envisioned, said the source, who declined to be identified because the report is not yet public.

The issue lies at the heart of the debate over whether pattern-based data mining—or searching for bad guys without a known suspect—can succeed without invading people's privacy and violating their civil liberties.

A DHS official who helped develop ADVISE said that the program was tested on only "synthetic" data, which he described as "real data" made anonymous so it could not be traced back to people. The system has been tested in four DHS pilot programs, including one at the Office of Intelligence and Analysis, to help analysts more effectively sift through mounds of intelligence reports and documents. In another pilot at a government laboratory in Livermore, California, that assessed foreign and domestic terror groups' ability to develop weapons of mass destruction, ADVISE tools were found "worthy of further development," DHS spokesman Christopher Kelly said.

The DHS is completing reports on the privacy implications of all four pilot programs. Such assessments are required on any government technology program that collects people's personally identifiable information, according to DHS guidelines.

The DHS official who worked on ADVISE said it can be used for a range of purposes. An analyst might want, say, to study the patterns of behavior of the Washington area sniper and look for similar patterns elsewhere, he said. The bottom line is to help make analysts more effective at detecting terrorist intent.

ADVISE has progressed further than the program killed by Congress in 2003, Total Information Awareness, which was being developed at the Defense Advanced Research Projects Agency (DARPA). Yet it was partly ADVISE's resemblance to Total Information Awareness that led lawmakers last year to request that the GAO review the program. Though Total Information Awareness never got beyond an early research phase, unspecified subcomponents of the program were allowed to be funded under the Pentagon's classified budget, which deal largely with foreigners' data.

The Disruptive Technology Office, a research arm of the intelligence community, is working on another program that would sift through massive amounts of data, such as intelligence reports and communications records, to detect hidden patterns. The program focuses on foreigners. Officials declined to elaborate because it is classified.

Officials at the office of the director of national intelligence stressed that pattern analysis research remains largely theoretical. They said the more effective approach is link analysis, or looking for bad guys based on associations with known suspects. They said that they seek to guard Americans' privacy, focusing on synthetic and foreigners' data. Information on Americans must be relevant to the mission, they said.

Still, privacy advocates raise concerns about programs based on sheer statistical analysis because of the potential that people can be wrongly accused. "They will turn up hundreds of soccer teams, family reunions, and civil war re-enactors whose patterns of behavior happen to be the same as the terrorist network," said Jim Harper, director of information policy studies at the Cato Institute.

But Robert Popp, former DARPA deputy office director who founded National Security Innovations, a Boston firm working on technologies for intelligence agencies, said that research anecdotally shows that pattern analysis has merit. In 2003, he said, DARPA researchers using the technique helped interrogators at the U.S. prison at Guantanamo Bay, Cuba, assess which detainees posed the biggest threats. Popp said that analysts told him that "detainees classified as 'likely a terrorist' were in fact terrorists, and in no cases were detainees who were not terrorists classified as 'likely a terrorist.' "

Some lawmakers are demanding greater program disclosure. A bipartisan bill co-sponsored by Senate Judiciary Committee Chairman Patrick J. Leahy (D-Vt.) would require the Bush administration to report to Congress the extent of its data-mining programs. Reported in: *Washington Post*, February 28.

Washington, D.C.

A U.S. Army unit that monitors thousands of Web sites and soldiers' blogs looking for sensitive military information has been hit with a Freedom of Information Act (FoIA) lawsuit by a San Francisco-based privacy group that wants to know more about the monitoring program.

In a lawsuit filed in U.S. District Court in Washington in late January, the Electronic Frontier Foundation (EFF) said that despite several requests for information from the Army unit, known as the Army Web Risk Assessment Cell (AWRAC), no answers have been provided.

Marcia Hofmann, a Washington-based staff attorney for the EFF, said the FoIA lawsuit is aimed at protecting free speech and privacy and helping soldiers and other Americans understand how and why Web sites and soldiers' blogs are being monitored. "The idea is to get more infor-

mation on what the Army is doing," Hofmann said. "Some soldier bloggers choose not to blog because of concerns about what they can and can't say" online.

The EFF wants to know how AWRAC finds and monitors Web sites and blogs and how it asks people to remove information from them, she said. The EFF also wants to know what specific rules and protocols the unit uses to determine what information is sensitive and why, as well as whether blogs and Web sites of civilians are also being scrutinized, she said.

"This is a compelling question . . . and the public should know more about it," Hofmann said.

In an announcement about the lawsuit, the EFF said that some bloggers have cut back on their posts or shut down their sites after being contacted by the AWRAC. "Soldiers should be free to blog their thoughts at this critical point in the national debate on the war in Iraq," Hofmann said. "If the Army is coloring or curtailing soldiers' published opinions, Americans need to know about that interference."

Hofmann acknowledged that the military "requires some level of secrecy," but added that "the public has a right to know if the Army is silencing soldiers' opinions as well."

Gordon Van Vleet, public affairs officer for the Army's Network Enterprise Technology Command/9th Signal Command, which oversees AWRAC, said he could not directly comment on the EFF lawsuit but was able to respond to written questions about the unit.

AWRAC, which is part of the Army Office of Information Assurance and Compliance, "notifies webmasters and blog writers when they find documents, pictures and other items that may compromise security," according to the Army. "AWRAC reviews for information on public web sites which may provide an adversary with sensitive information that could put soldiers or family members in danger. AWRAC assesses the risk the information poses to the military and determines if the next step is to request the information be removed."

The unit, which is based in Fort Belvoir, Virginia, was created in 2002. Its chief mission is looking for operations security violations, such as posted information that may put a soldier or a family member at risk, including Social Security numbers, addresses, or other identifying information. The number of personnel working within the AWRAC was not released because of security concerns, according to the Army.

Using various software online search tools, the unit's personnel monitor public Web sites for sensitive information using such key words as "for official use only" or "top secret," while recording the number of times the terms are found on a site, according to the Army.

The unit uses Department of Defense and Army directives and regulations to determine whether any of the information found violates security, Van Vleet wrote. "Additionally, each Web Risk Cell [member] has more than 40 hours of [operations security] training helping them understand what to look for and then we educate on the First and Fourth Amendments [of the U.S. Constitution]. We educate the cell members so they can educate others."

If information is found on a soldier's Web site or blog that is seen as an operations security violation, "a phone call [is made] or [an] e-mail is sent to the affected user and/or their leadership explaining what we found," Van Vleet said. "What happens after that is up to the user/leadership." The unit has no legal authority to ask for changes and "does not 'force' changes to content," nor does it force a blog or site to be shut down, he said.

Since blogs became popular several years after the unit was formed in 2002, information is now being disseminated to military personnel about content that threatens military security, Val Vleet said. "Blogs are fairly new, and they are growing in size and popularity. Because of their newness and the fact that anyone can participate, AWRAC helps to educate our soldiers."

In addition to reviewing sites and blogs of military personnel, the unit also "reviews public sites for material [or] information posted by soldiers that contains operations security violations," Van Vleet said. The unit does not have legal authority to demand changes in those sites or blogs either, he said.

Final decisions on all security questions are made by the soldier involved and his or her military leaders, according to the Army. "AWRAC doesn't make the kinds of decisions that require an appeal," Van Vleet said. "[Its] reach only extends as far as a phone call or e-mail sent to the affected user and/or their leadership." Reported in: *Computer World*, February 5.

Internet

Lisbon, Portugal

The Internet's key oversight agency voted March 30 not to give adult Web sites their own ".xxx" domain, the third time it has rejected the idea.

Many in the adult-entertainment industry and religious groups alike had criticized the plan. The Canadian government also warned that it could put the Internet Corporation for Assigned Names and Numbers in the tricky business of content regulation, having to decide which sites are pornographic and which are not.

Porn sites opposed to ".xxx" were largely concerned that the domain name, while billed as voluntary, would eventually lead to governments mandating its use and pushing them into a so-called online ghetto.

Religious groups worried that ".xxx" would legitimize and expand the number of adult sites, which more than a third of U.S. Internet users visit each month, according to comScore Media Metrix. The Web site measurement firm

said 4 percent of all Web traffic and 2 percent of all time spent Web surfing involved an adult site.

"This decision was the result of very careful scrutiny and consideration of all the arguments. That consideration has led a majority of the board to believe that the proposal should be rejected," said Vinton Cerf, ICANN's chairman.

The 9-5 decision came at an open board meeting, with each of the voting members explaining their reasoning. It came nearly seven years after the proposal was first floated by ICM Registry LLC, a Florida startup that handles Web-site registrations with the aim of overseeing sites that want to have the ".xxx" Internet suffix.

Paul Twomey, ICANN's chief executive, who had described the proposal as "clearly controversial, clearly polarizing" abstained from the vote but did not say why.

"We are extremely disappointed by the board's action today," said Stuart Lawley, ICM's president and chief executive. He added that ICM would pursue the matter further and said a lawsuit against ICANN was likely.

Suppportive board members said ICANN should not block new domains over fears of content regulation, noting that local, state, and national laws could be used to decide what is pornographic. Nearly all of the board members who voted against approving the domain said they were concerned about the possibility that ICANN could find itself in the content regulation business.

Opponents said they believed that opposition to the domain by the adult industry, including Web masters, content providers and others, was proof that the issue was divisive and that ".xxx" was not a welcome domain.

Board member Raimundo Beca of Chile, who voted against the domain said the adult industry, "has been from the very beginning so split about this."

ICM cited preregistrations of more than 76,000 names as evidence of support.

ICANN agency tabled and effectively rejected a similar '.xxx' proposal in 2000 out of similar content regulation fears. ICM resubmitted its proposal in 2004, this time with language establishing a policy-setting organization to free ICANN of that task. But many board members worried that the language of the proposed contract was vague and could kick the task back to ICANN. The board rejected the 2004 proposal last May.

ICANN revived the proposal in January after ICM agreed to hire independent organizations to monitor porn sites' compliance with the new rules, which would be developed by a separate body called the International Foundation for Online Responsibility.

ICANN will no longer hear ICM's proposal but an entirely new application could be considered. Reported in: *Seattle Post-Intelligencer*, March 30. □

(from the bench. . . from page 108)

Judge Haight noted that the Police Department had not produced evidence that any applications for permission to videotape had ever been filed.

Near the end of his fifty-one-page order, the judge warned that the Police Department must change its practices or face penalties. "Any future use by the N.Y.P.D. of video and photographic equipment during the course of an investigation involving political activity" that did not follow the guidelines could result in contempt proceedings, he wrote.

At monthly group bicycle rides in Lower Manhattan known as Critical Mass, some participants break traffic laws, and the police routinely videotape those events, Judge Haight noted. That would be an appropriate situation for taping, he said, but police officials did not follow the guidelines and apply for permission.

"This is a classic case of application of the guidelines: political activity on the part of individuals, but legitimate law enforcement purpose on the part of the police," Judge Haight wrote. "It is precisely the sort of situation where the guidelines require adherence to certain protocols but ultimately give the N.Y.P.D. the flexibility to pursue its law enforcement goals."

Gideon Oliver, a lawyer who has represented many people arrested during the monthly bicycle rides, said he was troubled by the intensive scrutiny of political activities. "I'm looking forward to a deeper and more serious exploration of how and why this surveillance has been conducted," Oliver said.

In the past, the Police Department has said that it needed intelligence about the Critical Mass rides in order to protect the streets from unruly riders.

Patrick Markee, an official with another group that was cited in the ruling, the Coalition for the Homeless, said the judge's decision ratified their basic rights to free speech. "We're gratified that Judge Haight found that the police shouldn't engage in surveillance of homeless New Yorkers and their supporters when they're engaged in peaceful, lawful political protest," Markee said.

The Police Department's approach to investigating political, social, and religious groups has been a contentious subject for most of four decades, and a class action lawsuit brought by political activists, including a lawyer named Barbara Handschu, was settled in 1985. Judge Haight oversees the terms of that settlement, which are known as the Handschu guidelines, and which he modified in 2003.

At the time, Judge Haight said that the police could "attend any event open to the public, on the same terms and conditions of the public generally." But in the latest ruling, he said that permission "cannot be stretched to authorize police officers to videotape everyone at a public gathering

just because a visiting little old lady from Dubuque (to borrow from *The New Yorker*) could do so. There is a quantum difference between a police officer and the little old lady (or other tourist or private citizen) videotaping or photographing a public event.''

The judge said he bore some responsibility for misinterpretation of the guidelines. "I confess with some chagrin that while the text of this opinion and its implementing order, read together, may not be as opaque as the irritatingly baffling pronouncements of the Oracle'' at Delphi, "they do not constitute a model of clarity,'' he wrote. Reported in: *New York Times*, February 16. □

(dateline . . . from page 100)

Dr. Enderle said Fulton High's students had largely accepted his decision and moved on. They are now rehearsing *A Midsummer Night's Dream* as their spring drama.

But students who had already begun practicing for auditions of *The Crucible,* expressed frustration and resignation, along with an overriding sense that there was no use fighting City Hall.

"It's over,'' said Emily Swenson, fifteen, after auditioning for *A Midsummer Night's Dream.* "We can't do anything about it. We just have to obey.''

Both the students and DeVore seemed unsure of why *The Crucible,* which students study in eleventh grade, was unacceptable.

Jarryd Lapp, a junior who was a light technician on *Grease,* said he was disappointed that *The Crucible* was canceled. But he had a theory. "The show itself is graphic,'' he said. "People get hung; there's death in it. It's not appropriate.''

DeVore believes it was canceled because it portrays the Salem witch trials, "a time in history that makes Christians look bad. In a Bible Belt community, it makes people nervous.''

The teacher and her students are now ruling out future productions they once considered for their entertainment value alone, such as *Little Shop of Horrors,* a musical that features a cannibalistic plant, which they had discussed doing next fall.

Torii Davis, a junior, said that in her psychology class earlier that day, most students predicted that *Little Shop of Horrors* would never pass the test. "Audrey works in a flower shop,'' Davis said. "She has a boyfriend who beats her. That could be controversial.''

DeVore went down a list of the most commonly performed musicals and dramas on high school stages, and ticked off the potentially offensive aspects. "*Bye Bye Birdi*e has smoking and drinking. *Oklahoma,* there's a scene where she's almost raped. *Diary of Anne Frank,* would you take a six-year-old?'' the drama teacher asked.

"How am I supposed to know what's appropriate when I don't have any written guidelines, and it seems that what was appropriate yesterday isn't appropriate today?'' DeVore asked. The teacher said she had been warned that because of the controversy, the school board might not renew her contract for next year.

Dr. Enderle acknowledged the controversy had shrunk the boundaries of what is acceptable for the community. He added that *A Midsummer Night's Dream* was "not a totally vanilla play.'' But asked if the high school might put on another Shakespeare classic about young people in love, *Romeo and Juliet,* he hesitated.

"Given the historical context of the play,'' the superintendent said, "it would be difficult to say that's something we would not perform.'' Reported in: *New York Times*, February 11.

Cross River, New York

The three girls had been warned by teachers not to utter the word. But they chose to say it anyway—vagina—in unison at a high school forum, and were swiftly punished by their school.

The case of the three, all juniors at John Jay High School in Cross River, a hamlet fifty miles north of Manhattan, became a cause célèbre among those who said the school has gone too far, touching off a larger debate about censorship and about what constitutes vulgar language.

Is vagina, or the "v-word," as some in the town refer to it, such a bad word?

"We want to make it clear that we didn't do this to be defiant of the school administration," said Megan Reback, one of the three girls, who all received one-day suspensions for using the word during a reading of *The Vagina Monologues* at a forum March 1. "We did it because we believe in the word vagina, and because we believe it's not a bad word. It shouldn't be a word that is ever censored, and the way in which we used it was respectable."

School administrators said the girls, all sixteen, were suspended not for using the word but rather for insubordination. Principal Rich Leprine said the girls were told not to use the word because young children could be in the audience, but that they used it anyway after agreeing not to.

"When a student is told by faculty members not to present specified material because of the composition of the audience and they agree to do so, it is expected that the commitment will be honored and the directive will be followed," Leprine said. "When a student chooses not to follow that directive, consequences follow."

The girls say they never made such an agreement.

Leprine's explanation of the rationale for the suspensions did not stem an outpouring of support from the girls'

peers, as well as from many parents, who contend that the word is not vulgar and that the effort to muffle the three was censorship.

Classmates have gone so far as to make T-shirts and posters to protest the punishment, and a Facebook site opposing the suspensions has attracted attention from people nationwide, who have posted such messages as: "We support you, and we support your courage. Vagina Pride!"

The girls also have been embraced by the writer of *The Vagina Monologues,* Eve Ensler, who grew up in nearby Scarsdale and said she might visit the school to discuss the controversy and to encourage people to feel comfortable about saying the word.

Not that the students seem to need encouragement. On Web sites, at school, and among their supporters, the girls are now being referred to by a term popularized by Ensler: the "Vagina Warriors."

The play's title has provoked controversy elsewhere. In 2002, officials in nearby Irvington objected to a sign advertising the play at a town-owned theater because they did not want the word displayed on public property. The word was truncated to "v."

Other small theaters around the country have been embroiled in similar controversies over the play, and even a few universities, including Notre Dame, have been criticized for allowing it to be performed on their campuses. Some have only allowed it to be performed off campus.

The selection from the play that Reback and the other two girls, Elan Stahl and Hannah Levinson, chose to read at an event sponsored by the school literary magazine was "My Short Skirt."

Stahl said she and the other two girls, all honor students, wanted to read the passage because it had inspired them to "embrace our bodies, our femininity, and our womanhood," and that they had gone out of their way to choose one of the least graphic sections.

"We wanted one that we felt was more appropriate for the setting," she said. "The use of the word vagina in this piece wasn't sexual, and the piece and the context of the word is empowering." Reported in: *New York Times*, March 8.

colleges and universities

Coeur d'Alene, Idaho

An adjunct instructor at a two-year college in Idaho who reportedly made inflammatory remarks about Republicans in her English class has become a target of right-wing bloggers and has received several death threats.

A student in the class complained that Jessica Bryan told her English composition class at North Idaho College that she favored the death penalty for Republicans and that people who voted for President Bush could not read.

Bryan said she did not intend the remarks to be taken seriously and that she was only trying to stimulate discussion.

In that, she succeeded. And she did so in a state that is dominated by Republican office holders at both the federal and state levels, and that gave President Bush one of the greatest margins of victory of any state in both 2000 and 2004.

The student, Linda Cook, wrote an article for the *Coeur d'Alene Press* that assailed the instructor's remarks and called them "hate speech." In the article, Cook wrote that Bryan "was unflagging in her contempt for anything conservative or Republican."

Since the remarks became public, Bryan and several North Idaho administrators have received anonymous e-mail threats, according to Kent Propst, a college spokesman. The local police in Coeur d'Alene are investigating the threats.

The incident also sparked discussion on a number of blogs. A blog called Right Wing Nation referred to Bryan as a "moonbat" and an "idiot." Some news reports said that the Federal Bureau of Investigation was also involved, but a spokeswoman for the Coeur d'Alene police department said that was not true.

Propst said that an investigation had been conducted and that no punitive action would be taken against the instructor. However, Cook's $379 course fee was refunded. Reported in: *Chronicle of Higher Education* online, March 20.

periodicals

Seattle, Washington

Amazon.com planned to pull a dog-fighting DVD from its Web site February 7 following pressure from the Humane Society of the United States, which also wants the Internet retailer to get rid of magazines that promote cockfighting. The Seattle-based company, however, said it has no intention of removing the cockfighting magazines because of First Amendment concerns.

"With 90,000 titles in our magazine store, there is bound to be something that upsets people," said Patty Smith, a company spokeswoman. "We feel it is censorship to not sell certain titles. . . . Our refusal to remove these titles is not an endorsement of the content," she said. "It's a result of a content-neutral principle of free speech that we have defended for years."

The Humane Society said it plans to file civil lawsuits in King County Superior Court and in U.S. District Court in Washington, D.C., to stop Amazon from distributing "animal-fighting paraphernalia." The animal-rights organization contends that Amazon is violating federal animal welfare and cruelty acts. The Washington, D.C.-based Humane Society said it would petition the King County

Prosecutor's Office to stop Amazon from engaging in illegal business practices.

"We want to work with corporations and bring them into compliance rather than file lawsuits. But after a year-and-one-half with no movement, we feel this is our last resort," said Michael Markarian, executive vice president of the 10 million-member Humane Society.

At issue, according to both sides, are at least two magazines—*Gamecock* and *Feathered Warrior*—and a few DVDs that deal with animal fighting. *Gamecock* was the 220th most-popular magazine, while *Feathered Warrior* was the 1,014th most-popular magazine as of February 7.

Previously, the Humane Society called for removing *Grit and Steel*, the 358th most-popular magazine, according to Amazon.com. Smith said that Amazon would remove the pit bull fighting DVD *Unleashed.* She also said the company had removed other DVDs that depict animal fighting in the past. She said those videos were sold by third-party businesses.

She also said there is a different standard in censoring written material and videos. "The laws and tastes on the written word and descriptions are different than seeing those acts portrayed," she said.

However, she said it's very rare for the company to remove videos. Reported in: *Seattle Post-Intelligencer*, February 8.

art

Alhambra, California

The art has been taken down, but the bare walls in the Alhambra City Hall lobby have something to say. Artists featured in a Chinese New Year exhibit took down all thirty of their silk-screen prints February 20 after city staff removed a piece pairing Mao Zedong and George Washington that some viewers found offensive.

"They don't respect art and they don't respect artists," said Jeffrey Ma, whose artwork depicting the former Chinese Communist leader next to America's first president was taken down February 15.

Ma and the three other artists in the exhibit decided to take everything down after asking the city to put the piece back up, but failed to receive any commitment it would do so. The show was scheduled to run through February.

"If this place is not interested in us, we are not interested in this place," said John Kong, another artist. The group also retrieved the Mao piece, which was being kept in the City Clerk's office. Reported in: *San Gabriel Valley Tribune*, February 22.

foreign

Melbourne, Australia

An Australian state has banned the online video Web site YouTube from government schools in a crackdown on cyber-bullying. Victoria, Australia's second most populous state, banned the popular video-sharing site from its 1,600 government schools after a gang of male school students videotaped their assault on a seventeen-year-old girl on the outskirts of Melbourne. The assault, which is being investigated by police, was uploaded on YouTube late last year.

Education Services Minister Jacinta Allan said the schools and their Internet service providers already filtered the Web sites that were available to students, and YouTube had been added to a list of blocked sites.

The state government "has never tolerated bullying in schools, and this zero tolerance approach extends to the online world," Allan said. "All students have the right to learn in a safe and supportive learning environment—this includes making students' experience of the virtual world of learning as safe and productive as possible," she said.

YouTube is a free video-sharing site that lets users upload, view, and share video clips. Reported in: cnn.com, March 1.

Paris, France

French people could be prevented from posting images or videos of violent acts online under new laws. Part of a new youth delinquency law targets "happy slapping," the recording of violent acts to entertain the attacker's friends. The law makes it illegal for anyone but professional journalists to film and broadcast violent events in France. Press freedom advocates say the ban could restrict citizens reporting on subjects such as police brutality.

Julien Pain, head of the Internet freedom desk at the French press advocacy group Reporters without Borders, said that although the law was written with happy slapping in mind, "it's drafted much wider than that. It could prevent not only happy slapping, but videos of police brutality," he said.

According to Pain's translation, the law specifically exempts those whose profession is to inform the public. However, he added that in practice, the law may not have any chilling effects. "I don't think it's that bad because I don't think a judge in France would sentence someone for taping police brutality," he said.

The new law changes how French regulation of violent content on the Internet operates. Previously, government officials would go to the Internet service provider or hosting company to have them remove the content. Now officials can go directly to the individuals that published it.

In addition to the delinquency law, the French National Assembly is set to consider a government decree that would create a commission to give Internet service providers and Web sites quality labels. The members of the proposed commission would be appointed by the Government. Reported in: BBC News, March 7.

Palestine

The Hamas-run Palestinian education ministry has ordered that an anthology of folktales be removed from state schools, sparking accusations of Islamic crackdown. Some Palestinians fear that the government, which came to power last March, is trying to enforce its Islamic agenda on the occupied Palestinian territories.

The four-hundred-page book, *Speak, Bird, Speak Again*, was compiled by Sharif Kanaana, a professor of anthropology and folklore at the West Bank's Bir Zeit University, and by Ibrahim Muhawi, a teacher of Arabic literature and the theory of translation.

Dr. Kanaana said that he worried that banning the book could be the start of a new trend. "I think that everyone is concerned that this could happen again," he says. "It's a question of principle: Is this going to start happening to other books?"

About 1,500 copies of the book were taken off the shelves from 150 school libraries in the West Bank and Gaza in early March, after some of the language was deemed inappropriate. Most commentators have assumed references to genitalia in the book had been the problem, but a senior official at the ministry denied this.

"The book is written in slang Arabic and is simply not appropriate for teaching," said Tharwat Zeid. He explained that two years ago the then-Fatah-led education ministry removed a book from schools that contained a passage referring to boyfriends and girlfriends.

But Dr. Kanaana countered that people were being too "fanatic about these things and too stiff on the issues" He said the book, which contains forty-five Palestinian folktales and analysis, was part of the fabric of Palestinian society. "I've heard these stories all my life," he said. "And while some of the language can be a bit vulgar, it's an important record."

Ever since Hamas came to power, some Palestinians have been concerned that the Islamic movement would enforce a strictly Islamic interpretation on the society. Most people, however, say there has been little discernable change. Analysts say Hamas has been too busy dealing with the international community's economic embargo, imposed because of Hamas's refusal to recognise Israel, to impose an Islamic agenda such as banning alcohol sales.

But there are now fears that the book ban could be the beginning of a more radical program. "I think it is a dangerous decision that shows us the hidden face of Hamas," says Hani Masri, the director of the Palestine Media, Research, and Studies Centre in the West Bank city of Ramallah. "Hamas have always wanted Palestinian society to be more Islamic, and the ban shows this."

Kanaana said he is not interested in politics or religion. He is only interested in getting his book back on the shelves. "I don't want my book to be used by Palestinian groups to attack each other," he explained. "But I do think it was a mistake to ban the book, as it contains nothing harmful or offensive." Reported in: BBC News, March 8. □

(FBI . . . from page 85)

The report faulted FBI agents for obtaining telephone records on 739 occasions using a tactic called "exigent letters," claiming there were emergencies requiring immediate compliance before an NSL or grand jury subpoena could be produced. The audit revealed that in many instances these letters were signed by unauthorized subordinate agents and were not connected to a pending investigation; often, no follow-up NSLs or subpoenas were issued.

An NSL was used in at least one instance to request library records in 2005, when the FBI demanded the Library Connection consortium in Connecticut turn over records of patrons' computer use. The incident led to a court challenge by the American Civil Liberties Union on the gag order specified in the NSL. The FBI abandoned its request for the records one year later, and withdrew the gag order.

Sen. Arlen Specter (R-PA) raised the possibility that Congress might roll back some PATRIOT Act provisions. In a statement released after the audit, Specter said, "When we reauthorized the PATRIOT Act last year, we did so on the basis that there would be strict compliance with the limitations included in the statute."

"This is, regrettably, part of an ongoing process where the federal authorities are not really sensitive to privacy and go far beyond what we have authorized," said Specter, the ranking Republican on the Senate Judiciary Committee. "One day there will be a new attorney general, maybe sooner rather than later," he added.

The report by Inspector Gen. Glenn A. Fine presented a picture of mismanagement and self-regulation gone awry. Fine said he had no evidence of intentional wrongdoing, but found numerous examples of FBI personnel violating internal guidelines and procedures, as well as a failure to establish clear policies.

The report found that the FBI had greatly underreported the number of problems with national security letters to the President's Intelligence Oversight Board. And it indicated that the violations the FBI did report were less serious than ones that Fine and his investigators uncovered independently.

The FBI reported just twenty-six possible violations to the White House oversight board between 2003 and 2005, most of which were minor, such as "typographical errors," the report found.

But the watchdog report indicated that hundreds, or even thousands, of potentially more serious violations went unreported. Fine said a review of seventy-seven FBI case files in four field offices found that seventeen of the files, or 22 percent, contained violations that had not been identified by the field office or reported to FBI headquarters as required. Among the violations of policies and procedures:

- A letter for telephone billing records was issued twenty-two days after the authorized period for the investigation had lapsed.
- Full consumer credit reports were obtained during espionage investigations, even though the law says the information should only be available in international terrorism cases.
- Educational records were improperly obtained from a North Carolina university.
- Unauthorized information about phone numbers was received in ten cases because of transcription errors and other problems by phone company providers.

Investigators also alleged that FBI headquarters circumvented the rules by obtaining billing records and subscriber information from three telephone companies on about three thousand phone numbers without issuing national security letters at all.

The law allows the FBI to obtain such records under "exigent" circumstances. But the report found that the bureau, with the support of the phone companies, was using the power in non-emergency situations. The records were supplied between 2003 and 2005. The report found even top FBI lawyers were unaware of the practice until the latter part of 2004.

"The authority got decentralized, and what appears to have happened is that the FBI never built the proper processes for accountability and review at the field level," said Michael Woods, a former head of the FBI national security law branch who once reviewed NSL requests. "When all the requests went through my office, we had a really good idea about the legal standards, but it was slow," Woods said. "People were screaming about the delays."

The inspector general's report resulted from a concession made to Democrats and other critics of the PATRIOT Act during the debate over renewing the law last year. The Bush administration had fought new restrictions on the use of NSLs but acceded to the inspector general conducting periodic reviews for the public.

Lawmakers were already seething at the Justice Department because of the firing of eight federal prosecutors and because of Gonzales's dismissive response to critics.

Senate Majority Whip Richard J. Durbin (D-IL) in a statement said the audit "confirms the American people's worst fears about the PATRIOT Act. It appears that the administration has used these powers without even the most basic regard for privacy of innocent Americans." He called for "reasonable reforms" that have been proposed but not acted upon in the past.

In a statement released on March 9, American Library Association President Leslie Burger said:

"A recent report by Justice Department Inspector General Glenn Fine showed numerous violations of policy and several potential violations of law in the Federal Bureau of Investigation's (FBI's) distribution and enforcement of National Security Letters (NSLs). NSLs carry particular significance for libraries, as virtually all of the libraries in the United States provide public access to the Internet, and are thus potentially vulnerable to the demand for records.

"The findings by the Inspector General are indeed disappointing, yet not surprising given the sheer volume of letters handed out in recent years (19,000 in 2005 alone, according to the *Washington Post*), and given that the FBI needs virtually no justification in order to serve a letter.

"While ALA fully supports the efforts of law enforcement in legitimate investigations, those efforts must be balanced against the right to privacy. These findings confirm many of ALA's most repeatedly stated concerns about the lack of oversight into the FBI's surveillance activities, resulting in repeated intrusions into the lives of innocent American citizens.

"Since the FBI agent does not need to get approval from a judge, prosecutor, or grand jury, and since the recipient is permanently 'gagged' from telling its customers or anyone else about the government's request, citizens never know that their personal information has been disclosed to the government.

"In May 2006, recipients of an NSL—a nonprofit consortium of twenty-seven public and academic libraries in central Connecticut known as the Library Connection—were finally allowed to speak publicly after lawyers representing the government withdrew an appeal to keep their identities hidden after Federal District Court Judge Janet C. Hall declared the perpetual gag order that accompanies NSLs unconstitutional.

"This is just one example of libraries being subject to NSLs, and notably came not long after the FBI claimed not to have ever invoked Section 215 of the PATRIOT Act (the section concerning library records). The recent findings by the Inspector General demonstrate that not only was the FBI misleading citizens then, it's been misleading them all along. The ALA thanks Congress for doing its Constitutional duty by beginning an investigation into this matter, and further calls upon Congress to tighten language in the PATRIOT Act to minimize these sorts of privacy violations and to provide thorough, ongoing oversight into the FBI's surveillance activities."

A top official in the surveillance program warned the bureau about widespread lapses, his lawyer said. The official, Bassem Youssef, who is in charge of the bureau's Communications Analysis Unit, said he discovered frequent legal lapses and raised concerns with superiors soon after he was assigned to the unit in early 2005.

Stephen M. Kohn, the lawyer for Youssef, said his client told his superiors that the bureau had frequently failed to document an urgent national security need—proving "exigent circumstances," in the bureau's language—when obtaining personal information without a court order through the use of NSLs.

Youssef said his superiors had initially minimized the scope of the problem and the likely violation of laws intended to protect privacy, Kohn said.

"He identified the problems in 2005, shortly after he became unit chief," Kohn continued. "As in other matters, he was met with apathy and resistance."

Youssef's criticisms were first reported by the *Washington Post,* which also cited internal e-mail messages in which Justice Department officials had discussed the legal lapses surrounding national security letters.

Youssef, born in Egypt, is suing the bureau for discrimination, charging that senior officials improperly suspected his loyalties in part because of his Egyptian origins.

In a related development, it was disclosed that FBI agents repeatedly provided inaccurate information to win secret court approval of surveillance warrants in terrorism and espionage cases, prompting officials to tighten controls on the way the bureau uses that powerful anti-terrorism tool, according to Justice Department and FBI officials.

The errors were pervasive enough that the chief judge of the Foreign Intelligence Surveillance Court, Colleen Kollar-Kotelly, wrote the Justice Department in December 2005 to complain. She raised the possibility of requiring counterterrorism agents to swear in her courtroom that the information they were providing was accurate, a procedure that could have slowed such investigations drastically.

An internal FBI review in early 2006 of some of the more than 2,000 surveillance warrants the bureau obtains each year confirmed that dozens of inaccuracies had been provided to the court. The errors ranged from innocuous lapses, such as the wrong description of family relationships, to more serious problems, such as citing information from informants who were no longer active, officials said.

The FBI contends that none of the mistakes were serious enough to reverse judges' findings that there was probable cause to issue a surveillance warrant. But officials said the errors were significant enough to prompt reforms bureau-wide.

"It is clear to everybody this is a serious matter. This is something that has to happen quickly. We have to have the confidence of the American people that we are using these tools appropriately," said Kenneth Wainstein, the Justice Department's new assistant attorney general for national security.

In the use of both NSLs and the FISA warrant applications, officials acknowledged that the problems resulted from agents' haste or sloppiness—or both—and that there was inadequate supervision.

"We've oftentimes been better at setting the rules than we have been at establishing the internal controls and audits necessary to enforce them," FBI Assistant Director John Miller said.

"It is a little too easy to blame the FBI, because the FBI gets away with this stuff when the other institutions of government fail to do their jobs," said Marc Rotenberg, president of the Electronic Privacy Information Center, which monitors civil liberties issues.

Records show that the FISA court approves almost every application for the warrants, which give agents broad powers to electronically monitor and surveil people who they allege are connected to terrorism or espionage cases. The number of requests rose from 886 in 1999 to 2,074 in 2005. The court did not reject a single application in 2005 but "modified" sixty-one, according to a Justice Department report to Congress.

Senior Justice officials said they have begun a comprehensive review of all terrorism-fighting tools and their compliance with the law. That will be followed by regular audits and training to ensure that agents do not lapse into shortcuts that can cause unintended legal consequences.

Wainstein noted that before his division was created last year, the Justice Department could not systematically check FBI compliance with rules in all types of national security investigations. He acknowledged, for instance, that the department was told of twenty-six potential violations that the FBI had disclosed in its use of NSLs but did not focus on them.

Earlier this year, President Bush agreed to allow the FISA court to review surveillance requests from the National Security Agency after a battle with civil liberties groups and some lawmakers over the legality of that agency's spying effort, in which some suspects were overseas.

Last year's problems involving the FISA court, however, involved the issuance of secret warrants that authorized FBI agents to conduct surveillance inside the United States.

Shortly before the September 11, 2001, attacks, the FISA court complained that there were inaccuracies in seventy-five warrants that the court had approved going back several years. The FBI responded by instituting new policies to better ensure that the information agents provided in warrant applications was accurate and could be verified if questioned.

But audits conducted beginning in 2003 showed an increasing number of errors and corrections in applications. On December 12, 2005, the court sent a letter of complaint that raised the idea of agents being compelled to swear to the accuracy of information.

Justice and the FBI are reviewing about 10 percent of the 60,000 ongoing terrorism investigation files in search of problems. "We are learning to live in a different environ-

ment, and now we are aware and working on problems, and I think we are creating a lot of fixes," said Jane Horvath, the Justice Department's first chief privacy and civil liberties officer.

FBI officials said they expect the audit of national security letters for 2006 to show the same problems as those identified in the current audit, which covered 2003 through 2005.

"You are never going to be at a zero error rate because this is a human endeavor," Wainstein said. "Therefore it is subject to error on occasion. But we're going to do everything we can to minimize them." Reported in: *American Libraries* Online, March 9; *Los Angeles Times*, March 10; *New York Times*, March 19; *Washington Post*, March 27. □

(EPA . . . from page 88)

interlibrary loan technician is the only staff member left, a fact EPA previously had not disclosed. The regional library in New York City was scheduled to be closed to the public with reduced hours for EPA staff on January 2, but, in light of Congressional and public pressure, EPA only recently decided to halt further closures of its libraries for the time being.

Thus, we have two primary concerns about these closures:

1. In the course of shutting down these libraries, valuable, unique environmental information will be lost or discarded, and;

2. Because there are fewer libraries and professional library staff, scientists and the public will have limited access to this information. We have a deep concern with limitations these closings would place on the public's access to EPA library holdings and the public's "right to know." In an age of global warming and heightened public awareness about the environment, it seems ironic that the administration would choose this time to limit access to years of research about the environment.

Let me first address the loss of valuable environmental information.

Libraries and other cultural heritage institutions (archives, museums, and historical societies) have been digitizing collections for nearly twenty years. The digital resources provide access 365 days a year, 24 hours a day, regardless of where the person lives or works. Geographic and political boundaries disappear. These digital resources are subject to international and national standards, created by librarians, archivists, museum professionals, and representatives from the photographic and audio industry, public broadcasting, and computer industry.

Before we begin the costly digitization process, we always consider the needs of the current and future user communities. Digital content must be created in a fashion assuring that it will be usable twenty-five and fifty years from now. We need to capture cataloging information, or what we call metadata, about the digital resource so that we can find the digital object now and in the future, and so that if we have to recreate it we know how we created it the first time. Therefore, we need to know what camera we used to take the picture or which scanner we used. We also need to know copyright information and the rights associated with the object. All that information goes into the metadata, along with the title and keywords.

In a plan that is best described as "convoluted and complicated," materials from closed EPA libraries are being boxed and sent to other locations, where they are slowly being recataloged and then sent back to the Headquarters Library in D.C. (now closed), where there is no room to house these resources. Other resources have been sent to Research Triangle Park or the National Environmental Publications Internet Site (NEPIS) in Cincinnati, where they are slowly being digitized.

Further, the library community is troubled by the "dispersing" of materials from the closed regional libraries and the OPPTS library here in Washington, D.C. What this "dispersement" entails isn't exactly clear at this point, and what concerns us is how this information will be handled and, therefore, what type of long-term damage has been done to the effectiveness of EPA and the ability of the American public to find important environmental and government information.

Unfortunately, there continues to be a lot that we don't know: exactly what materials are being shipped around the country, whether there are duplicate materials in other EPA libraries, whether these items have been or will be digitized, and whether a record is being kept of what is being dispersed and what is being discarded. We remain concerned that years of research and studies about the environment may be lost forever.

Will digital documents be listed in the Online Computer Library Center (OCLC), a national database of the library holdings of more than 41,555 libraries in 112 countries, making them available to other research institutions? Is there metadata or cataloging being created to ensure that digital documents can be easily located on the Web? What will happen to the OCLC holdings of the closed libraries? How are help desks and other library functions being organized so that trained professionals are available to help the users of the EPA library and information services?

While we thank EPA for sending six staff members to our January conference in Seattle to address questions on the status of the EPA library network, none of the concerns I have mentioned were adequately addressed. The EPA representatives that attended the ALA conference in

Seattle talked about creating a premier digital library for the twenty-first century and making content from the EPA libraries available to the general public as well as to EPA scientists. To do that, the EPA will need a Web-enabled digital asset management system, which can not only display the full range of digital resources that are being converted, but also the digital resources of the future: audio, video, simulations, etc. digital asset management systems, or DAMs, provide the public with tools to locate and display digital resources, but these systems can also allow the EPA to provide access to authorized users. For example, if there is a publication that contractually can only be viewed by the EPA scientists, the EPA could digitize it, put it in the database, make the metadata searchable, but only allow it to be viewed by those authorized to view it. The DAM controls all of that through its authentication system.

Preservation of the digital assets is also very important. There are already many stories of digitized collections that have been saved on CDs, and when organizations have tried to access them the content is not viewable. CDs and DVDs are fine transport media, but no longer are they considered the best practice for preservation. Networked storage, both onsite and off site, is the current best practice. Best practice also calls for keeping two to three physical copies, along with the digital copy.

This recent experience with EPA underscores the need for the Executive Branch to develop and implement effective and consistent approaches for how government agencies undertake digitization of and access to government records and publications. The process needs to be coherent and user-focused. The government is the largest producer of information, and the information it produces is vital to public health and safety. As a consequence, it is critically important that instead of a growing patchwork of agency programs emerging—which may fail to satisfy user information needs—that we put in place effective and efficient public access programs to reap the benefits of the digital environment.

Without more detailed information about the EPA's digitization project, we cannot assess whether they are digitizing the most appropriate materials, whether there is appropriate metadata or cataloging to make sure that people can access the digitized materials, and that the technology that will be used to host the digital content and the finding software meets today's standards. In the age of digital media, it has become easier and easier for information to simply get lost in the shuffle, and there is no way of knowing if that's the case here.

The details mean a lot. Certainly, not all parts of each EPA library collection can be digitized; they probably have some materials that are copyrighted, for example. But there is so much specialized and unique material—including reports already paid for by taxpayers—and we do not know if these are part of the digitization projects. Further, we do not know about how their maps or other specialized formats have faired, formats that are very difficult and time-consuming to digitize.

In their haste to close down libraries and meet a fiscal deadline without a clear plan, EPA has created arbitrarily established deadlines. We continue to hear allegations from former and current EPA staff, who do not wish to be identified, that hundreds of valuable journals and books may have been destroyed. These staff members are concerned that materials that are unique to EPA (and in some cases exist nowhere else in the world) are no longer available.

EPA also claims to have been following ALA guidelines in its reorganization of holdings. In fact, as far as we can tell, that meant visiting the ALA Web site and using our very general guidelines about weeding library collections. Weeding is the process of periodically removing materials from a library's collection. Materials that are deselected are out of date, in poor condition, or if there are multiple copies available. The weeding standards were never intended for application in a digital environment.

While EPA did in fact meet with ALA staff in April and December of 2006 to discuss this issue, it failed to act upon the advice that came as a result of these meetings. As previously mentioned, to its credit, EPA also sent six staff members to ALA's Midwinter Meeting in Seattle a few weeks ago to answer questions from ALA members. Even still, there remains a lack of clarity as to what EPA's plans are for its library network. But of course, we would be pleased to provide advice on the digitization plans for the EPA network of libraries.

We have a deep concern with limitations these closings would place on the public's access to EPA library holdings and the public's right to know.

As one recently retired EPA librarian described it, the EPA libraries have been functioning like a virtual National Library on the Environment. (Indeed, the EPA was at one time a leader in providing public access to critical information in their collections.) The "virtual" national EPA library system functioned as a type of single national system. Because of its networking (both technical and human) and interlibrary loan and mutual reference services, users in any EPA library had access to the collections at all other sites.

This type of structure is generally very cost-effective and provides wide public access for staff and for the public.

Now that some of these regional libraries and the pesticide library are closed, key links have been removed from the chain, thus weakening the whole system, not just for those users closest to the closed facilities. Where will people look for information about their drinking water? Or which pesticides are safe for their grass? Or how much pollution is in the air of their hometown? These issues are of the utmost importance; our national health and safety depend on them!

ALA understands that we are living in the twenty-first century, an age when users can access much of what they

need from their own desk. In the digital environment, the librarian's role is changing. We also understand how complicated and costly the move to digitization can be. But the bottom line is that libraries still need skilled professionals to a) assist users; b) organize Internet access; and c) determine the best way to make the information available to those users. When searching the EPA site, one retrieves thousands of hits for a topic such as "water." When qualifying the search by a date range, the results include items outside that date range. The user will wonder about the veracity of the data and will need the assistance of the librarian.

Additionally, the librarians are needed to design the interfaces; with the Web you can design interfaces for the scientists, interfaces for teachers and students, and interfaces for the general public. Librarians are also needed to manage the digital objects, understand how new media must be managed; for example, when audio collections need to be converted, what are the user needs, what standards are to be used, and how should they be preserved. The same goes for video and emerging formats.

Further, there are still traditional library users out there. Not everyone does their searching via Web-based search engines. Many would still rather put their trust in the hands of a knowledgeable library professional, someone who knows the materials inside and out. It has been argued that the time of librarians is vanishing with the rise of the Internet, but this is a case in point where that is just not so. The EPA's environmental holdings are vast and dense, and a simple search engine just isn't enough. With the loss of the brick-and-mortar facilities comes the loss of the most important asset in the library: the librarian. After all, what good is information if you can't find it?

The future, it seems, calls for a hybrid, where not every single item or service is online, nor is everything confined to a physical structure. And the backbone of it all is a profession of skilled, knowledgeable, and, most importantly, helpful information specialists: librarians.

In closing: ALA asks that this Committee request EPA: a) halt all library closures; b) discuss a plan with stakeholders on how best to meet user needs and plan for the future; c) base any actions upon these users' needs; d) stop dispersing and dumping of any of their library materials immediately; e) stabilize and inventory the collections that have been put in storage; f) develop and implement a government-wide process to assist agencies designing effective digitization programs; and g) reestablish library professionals—inherently governmental library professionals.

Further, we would ask for library specialists to assist in any investigations, such as that conducted by the Government Accountability Office (GAO) study, or other inquiries, as to what is happening to these materials. Those EPA staff who are willing to talk (or retired and not at risk) tell us that these materials are being at best dispersed and, at worst, discarded. Also, and just as importantly, without trained librarians, users are having a very difficult time accessing what does remain of the EPA library system.

We appreciate your responsiveness and look forward to determining how we can save these collections, stabilize the library services for users, and understand how best to maximize access for staff, scientists, and the public at large to important environmental information.

Thank you again for this opportunity to speak on behalf of the American Library Association, and I am happy to take any questions from the Committee. ☐

(SMU . . . from page 90)

years. He said SMU is taking the long view as it tries to land a facility that will stand "for generations to come as a storehouse of history."

"It's not realistic to expect one university to get an executive order signed. . . . Public policy should be debated in the public square and the halls of Congress," he said.

Bush spokeswoman Emily Lawrimore noted that the National Archives has released more than two million pages since the new policy went into effect. "President Bush issued this executive order to ensure that we have an orderly system in place that encourages public disclosure while also respecting constitutionally granted executive authorities," she said.

The Bush order is part of a string of laws and directives governing presidential records.

In 1974, Richard Nixon tried to seal and even destroy some of his papers. Congress blocked that and, four years later, it passed the Presidential Records Act to clarify that administration records belong to the public. It struck a balance by allowing a twelve-year embargo and exemptions for national security and privacy.

In November 2001, a little more than a month after terrorist attacks on the World Trade Center and Pentagon and two months before the twelve-year clock would have run out for Reagan-era records, Bush changed the rules. Former chief executives, starting with President Reagan, could block release of any records for any reason and any length of time.

Watchdog groups and scholars called it an effort to nullify the records act and other open-records statutes, and they were especially aghast at the provision allowing a president's heirs to assert claims of executive privilege after his death, with no time limit.

Jenna and Barbara Bush calling the shots on memos from Colin Powell to their dad? Chelsea Clinton withholding Whitewater documents? "It's really outlandish," Aftergood said. "Presidential authority cannot be inherited in this country."

White House press secretary Ari Fleischer defended the order when it was issued, saying it was possible a current set of officials might not recognize the danger in releasing a twelve-year-old document. But critics noted that Bush had been delaying release of 68,000 pages of Reagan records, some involving aides who were back in the White House, holding top posts in the new administration.

Within a month, watchdog group Public Citizen had gone to federal court in Washington. The American Historical Association joined the lawsuit, along with the Organization of American Historians, the Reporters Committee for Freedom of the Press, and the American Political Science Association.

In spring 2004, U.S. District Judge Colleen Kollar-Kotelly—no stranger to issues of secrecy as head of the Foreign Intelligence Surveillance Act court—ruled that the case was moot because there were no pending assertions of privilege under the order. She reinstated the lawsuit at the urging of both sides, and a ruling has been pending for a year.

At Public Citizen, attorney Scott Nelson called Bush's order a "distortion of the constitutional principles that govern claims of executive privilege."

"You can view it in isolation or you can view it as another manifestation of a presidency that places a very high value on secrecy of government information and presidential control of access to information," he said.

So far, the executive order affects three former presidents: Ronald Reagan, the president's father, and Bill Clinton.

Reagan is the only one known to have invoked the order. In response to a 2002 records request at his library in Simi Valley, California, he asked the National Archives to withhold eleven documents. Court records show that those include a four-page memo on international economic issues, a two-page memo from the White House counsel regarding pardons for Iran-Contra figures Oliver North and John Poindexter, and a three-page memo titled "Executive Privilege."

Two of the documents were later released: a six-page memo prepared for the White House director of public affairs, titled "Talking Points on Iran/Contra Affairs," and a four-page memo from Fred Fielding—a deputy counsel to Reagan whom Bush has just hired as the new White House counsel—regarding first lady Nancy Reagan's use of military aircraft.

Bush concurred in the withholding of these records, and critics suspect he will resist full disclosure of his own records when the time comes.

Emily Sheketoff, executive director of the American Library Association's office in Washington, said the spirit of the executive order "completely goes against the spirit of the essence of a library. It would seem to me that an institution of higher learning, as SMU is, if they're associated with a library, would want to maintain the principles of a library. And one of the core values of a library is making information available, in a usable way, as transparently as possible," she said.

She noted that some of the finest scholarship in recent years—Robert Caro's work on Lyndon Johnson and David McCullough's book on Harry Truman—depended on access to presidential papers that let them "understand much more deeply and report much more thoroughly how decisions were made."

Thomas Blanton, director of the National Security Archive at George Washington University—another plaintiff in the lawsuit—noted that although the Reagan library released more than four million pages in the 1990s, it declassified fewer than 4,000 pages since Bush signed the order.

"The net effect of the Bush order has been to throw sand in the already rusty gears of the presidential libraries," Blanton said by e-mail. "It's not just our history at stake, it's how and whether we will ever be able to hold our presidents accountable." Reported in: *Dallas Morning News*, February 5. ☐

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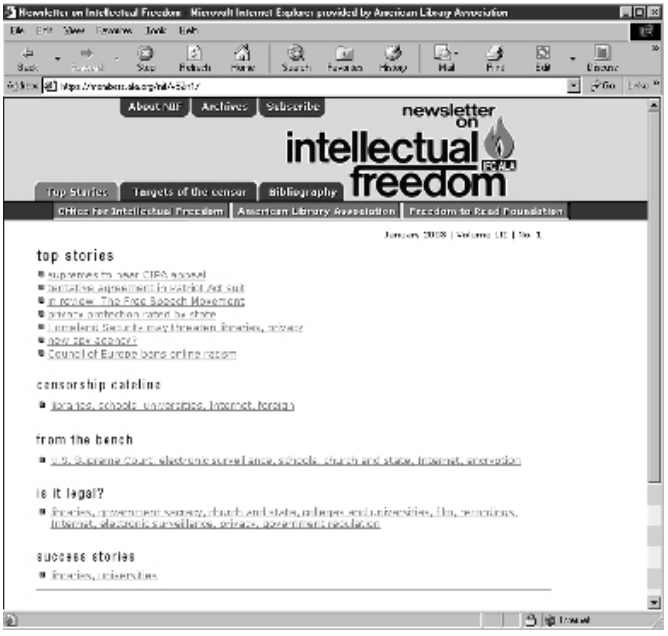

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Compiled by Erin Byrne, Associate Director, Office for Intellectual Freedom.

Gable, Craig, "The Freedom to Select," *American Libraries*. vol. 38, no. 3, p. 38.

Gillers, Stephen, "Free the Ulysses Two," *The Nation*. vol 284, no. 7, p. 20.

Lithwick, Dahlia, "Bong Hits 4 Jesus," slate.com. March 19, 2007, http://www.slate.com/id/2162161.

"*Lovely Bones* to stay on shelf." *American Libraries*. vol. 38, no. 3, p. 20.

Manzo, Kathleen Kennedy, "Challenged," *Education Week.* vol. 26, no. 5, p. 26.

Moraff, Christopher, "Why are EPA Libraries Closing?" *In These Times.* vol. 31, no. 2, p. 11.

Oder, Norman, " 'Net Neutrality" Bill Resurfaces." *Library Journal*. vol. 132, no. 3, p. 18.

Ott, Bill. "The Back Page." *Booklist*. Vol. 103, no. 14, p. 80.

Patton, Zach, "Issues to Watch," *Governing*. vol. 20, no. 4, p. 30.

Sousa, Lisa, "In Defense of a Free Press." *In These Times.* vol. 13, no. 3, p. 36.

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