

newsletter
on
intellectual
freedom



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COPA challenge in judge's hands

Final arguments concluded November 20 in the American Civil Liberties Union's (ACLU) challenge to the Child Online Protection Act (COPA). A decision by U.S. District Court Judge Lowell Reed of Philadelphia is expected in February.

The ACLU presented opening arguments October 23 in the challenge. COPA, which was passed in 1998 but never enforced due to injunctions and lower court decisions, requires commercial Web sites to obtain proof of age before providing material considered harmful to minors. The Act defines harmful to minors as material with nudity or other sexual content. The ACLU counters that filtering programs are a more effective means of protecting children.

The government "will argue that parents are too stupid to use filters," said ACLU attorney Chris Hansen in his opening statement. "It's an insulting argument and it's wrong."

The plaintiffs in *ACLU v. Gonzales*, which include Salon.com and Nerve.com, warned that the law could be used to criminalize sexual health information, erotic literature, and news photographs of naked prisoners tortured at Abu Ghraib. They also argued that the term "community standards" was too vague.

"As a parent, I know that what's fine for my daughter may not be appropriate even for some of her friends," testified Salon Editor-in-Chief Joan Walsh.

Government attorney Eric Beane said while it was tempting to defer to families on what was appropriate for children, filters used in private homes did not work. "The evidence will show that a shocking amount of pornography slips through to children," he said.

The Justice Department subpoenaed information from at least thirty-four Internet service providers, search companies, and filtering software firms in preparation for the case. Google defied the order and won a partial victory in federal court last March.

On October 30, *Newsletter* Associate Editor Henry Reichman testified on behalf of the plaintiffs. Reichman, who had submitted an expert witness report for the plaintiffs,

(continued on page 5)

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in this issue

COPA challenge in judge's hands.....	1
U.S. rank on press freedom slides lower.....	3
yes, please offend me.....	3
ETS accused of suppressing research.....	4
Krug to lead PBK.....	5
<i>copyright dateline</i> : libraries, schools, broad-casting, speakers, foreign.....	7
<i>from the bench</i> : U.S. Supreme Court, speech, terrorism, student press, Internet, video games.....	17
<i>is it legal?</i> : libraries, schools, protest, terrorism, PATRIOT Act, colleges and universities, broadcasting, child pornography.....	21
<i>success stories</i> : libraries, schools, etc.....	29

targets of the censor

books

<i>100 Greatest Tyrants</i> [Australia].....	33
<i>The Adventures of Huckleberry Finn</i>	14
<i>Alice in Jeopardy</i>	11
<i>And Tango Makes Three</i>	9
<i>Army of the Pure</i> [Australia].....	34
<i>The Autobiography of Miss Jane Pittman</i>	11
<i>The Bastard of Istanbul</i> [Turkey].....	35
<i>Blankets</i>	9
<i>The Blind Owl</i> [Iran].....	35
<i>The Da Vinci Code</i> [Iran].....	35
<i>Daughters of Eve</i>	10
<i>Facts on the Ground</i>	26
<i>Fun Home</i>	9

<i>Gilgamesh: A New English Version</i>	10
<i>Girl With a Pearl Earring</i> [Iran].....	35
<i>I Know Why the Caged Bird Sings</i>	30
<i>I Will Turn Out the Lights</i> [Iran].....	35
<i>The Journey Out</i>	29
<i>The Notebook Girls</i>	29
<i>Of Mice and Men</i>	29
<i>Real Girl/Real World</i>	29
<i>Romiette and Julio</i>	15
<i>So Far From the Bamboo Grove</i>	13
<i>Vamos a Cuba</i>	8
<i>What's Eating Gilbert Grape</i>	12

periodicals

<i>The Kernal</i> [East H.S.].....	19
<i>New York Times</i>	17, 37
<i>Muy Interesante</i>	7
<i>St. Paul Pioneer Press</i>	15

films and videos

<i>Basic Instinct</i>	7
<i>Shut Up and Sing</i>	16

speakers

<i>Jim Gilchrist</i>	33
<i>Tony Judt</i>	31

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U.S. rank on press freedom slides lower

Some poor countries, such as Mauritania and Haiti, improved their record in a global press freedom index this year, while France, the United States and Japan slipped further down the scale of 168 countries rated, the group Reporters Without Borders said October 23. The news media advocacy organization said the most repressive countries in terms of journalistic freedom—such as North Korea, Cuba, Burma and China—made no advances at all.

The organization's fifth annual Worldwide Press Freedom Index tracks actions against news media through the end of September. The group noted its concern over the declining rankings of some Western democracies as well as the persistence of other countries in imposing harsh punishments on media that criticize political leaders.

"Unfortunately nothing has changed in the countries that are the worst predators of press freedom, and journalists in North Korea, Eritrea, Turkmenistan, Cuba, Burma and China are still risking their life or imprisonment for trying to keep us informed," the organization said in a news release. North Korea holds the worst ranking at 168. Iran ranks 162nd, between Saudi Arabia and China.

The report said conditions in Russia and Belarus have not improved. It said Russia continued to steadily dismantle the independent media and that the recent slaying of investigative journalist Anna Politkovskaya "is a poor omen for the coming year."

Northern European countries top the index, with no reported censorship, threats, intimidation or physical reprisals, either by officials or the public, in Finland, Ireland, Iceland and the Netherlands. All of those countries were ranked in first place.

Serious threats against the artists and publishers of the Muhammad cartoons, which caricatured the prophet of Islam, caused Denmark, which was also in first place last year, to drop to nineteenth place. Yemen, at 149th place, slipped four places, mostly because of the arrests of journalists and the closure of newspapers that reprinted the cartoons. Journalists in Algeria, Jordan, Indonesia and India were harassed because of the cartoons as well.

Although it ranked 17th on the first list, published in 2002, the United States now stands at 53, having fallen nine places since last year. "Relations between the media and the Bush administration sharply deteriorated after the president used the pretext of 'national security' to regard as suspicious any journalist who questioned his 'war on terrorism,'" the group said.

"The zeal of federal courts which, unlike those in thirty-three U.S. states, refuse to recognize the media's right not to reveal its sources, even threatens journalists whose investigations have no connection at all with terrorism," the group said.

Lucie Morillon, the organization's Washington represen-

tative, said the index is based on responses to fifty questions about press freedom asked of journalists, free press organizations, researchers, human rights activists, and others.

France, thirty-fifth, dropped five places since last year because of searches of media offices and journalists' homes, as well as physical attacks on journalists during a trade union dispute, the group said.

In Lebanon, a series of bomb attacks targeting journalists and publishers in 2005, and Israeli military attacks last summer, contributed to a drop in the country's ranking from 56th to 107th in the past four years. Reported in: *Washington Post*, October 24. □

yes, please offend me (thanks for checking)

In an era in which seemingly anything can offend anyone, one professor at the University of Idaho is attempting to stay one step ahead by asking film students to sign a "statement of understanding" acknowledging the potentially offensive or repugnant content they'll be viewing.

Dennis West, a professor of film and Spanish, said he thinks the statement, distributed on the first day of his film classes, acts as a check to ensure unsophisticated undergraduates know what they're getting into. But others question the implications of a practice they believe to be well-intentioned but risky—should faculty be asking students to sign on to facing controversial subject matter?

"I guess I started to get more freshmen who would come to me and say, 'Well gee, I can't look at any film that has violence in it or nudity. So I developed a statement of understanding so people know ahead of time certain issues will be intellectually examined in some of these films, such as poverty, slavery, sexual themes, punishment and murder,'" said West.

"Film is an extraordinarily powerful medium," continued West, who counts among his visual texts *Night and Fog*, a documentary on the Holocaust that depicts the liberation of a concentration camp, and *A Clockwork Orange*, which features a rape sequence choreographed to "Singin' in the Rain."

"If you can't bear to look at footage of the opening up of the Bergen-Belsen concentration camp that shows bulldozers pushing human corpses, then maybe this course is not for you."

"West's practice may represent a first—a somewhat troubling first—in how faculty members handle teaching controversial subject matter," said Jonathan Knight, director of the program in academic freedom and tenure at the American Association of University Professors. "What does it mean to say to a person, 'Sign this statement saying you might be offended?' I would be worried that this opens the door slightly more than is typical . . . to submit sensitive material for prejudice by students."

Knight added that such a policy could potentially “yield authority to the students as to what should be taught in the course,” more so than would be the case when students choose on their own to drop a course or submit negative evaluations. He also worried that students who sign the document might feel that they have waived their rights to debate the academic value of certain films: “It all seems rather odd,” Knight said. “I should think that the professor’s laudable goal of letting the students know what they’re getting in for could be well-accomplished by just describing the content in the syllabus rather than having them sign a statement that raises implications about the authority responsible for the course.”

But West, who doesn’t ask his literature students to sign a similar statement because he considers film images to be particularly powerful, said he doesn’t worry about whether he’s compromising his own academic freedom by asking students to sign on to a course’s content: “I select the films,” he said. “I don’t see it as an issue of academic freedom; I see it more as a statement to students from day one that we’ll be looking at potentially controversial subject matter.”

The statement is voluntary, and so far in the few years since he introduced it, no student has declined to sign and he’s had very few drops. Several of West’s colleagues have requested copies of the statement, he said, but he does not know if any of them have adopted it.

“What he’s doing strikes me as reasonable but I don’t know if I would want it adopted as a general policy,” said Don Crowley, a professor of political science at the University of Idaho and vice chair of the Faculty Council.

“The idea that students have to give clearance before they confront a difficult issue is not a particularly good idea for higher education,” added Crowley. “But I think given the nature of the class that Dennis is teaching and the fact that he’s showing films that at least have a high probability that someone will be bothered, getting this advanced clearance doesn’t strike me as problematic. But I wouldn’t like to see it generalized.” Reported in: insidehighered.com, November 28. □

ETS accused of suppressing research on an alternative to affirmative action

A prominent higher-education researcher says scholars at the Educational Testing Service may have discovered a substitute for race-conscious college-admissions policies back in 1999, but their research project was suppressed—and eventually killed—before they could put their findings through peer review and make them public.

Anthony P. Carnevale, a former vice president for assessment, equity, and careers at ETS, says he and other

ETS researchers concluded in the summer of 1999 that it was theoretically possible for selective colleges to maintain or increase their black and Hispanic enrollments without giving extra consideration to applicants based on their ethnicity or race.

The researchers had developed a formula for using students’ background data to identify “strivers”—those who had overcome adversity to an impressive extent—and had fine-tuned the formula to a point where it showed the promise of producing larger black and Hispanic enrollments at selective colleges than were being obtained through race-conscious admissions, Carnevale said.

Carnevale alleged that College Board officials put pressure on ETS to squelch the entire “striver” line of research, mainly because they did not like how it added a new layer to the interpretation of SAT scores and feared that it would give federal courts reason to question colleges’ need for race-conscious admissions policies. The researchers never got a chance to determine conclusively—and then demonstrate to ETS and the College Board—that they had found what they were looking for: a way to achieve racial and ethnic diversity at selective colleges without using affirmative action.

“The work never saw the light of day,” Carnevale said.

Thomas Ewing, a spokesman for ETS, denied Carnevale’s account of what had transpired, saying “there was no pressure from the College Board to discontinue” the striver study. He said the study had been discontinued because “it was widely viewed at ETS as simply bad research,” and that the president of ETS, Kurt M. Landgraf, and the ETS research staff thought it “attempted to alter an objective measure (the SAT) inappropriately.”

Although ETS had long administered the SAT, the College Board owns the rights to it. When newspapers first reported on the existence of such a study, in August 1999, Gaston Caperton, who had just been installed as president of the College Board, responded by assuring colleges that there was no new system for interpreting SAT scores, “only research,” and that he would ensure that no such system came into use.

Wayne J. Camara, the College Board’s vice president for research, said “we thought the research was shoddy” and that using such a method for interpreting SAT scores “would not only be scientifically indefensible but would raise many fairness issues.”

Camara argued that the researchers involved in the striver study were proposing adjusting SAT scores based on factors such as the levels of poverty in a student’s school or neighborhood—an approach he called both “unfair” and “imprecise” because, for example, students from low-income families can be enrolled in wealthy high schools. Camara also expressed concern about the negative impact the application of a striver formula would have had on students from wealthy families, who enjoyed many advantages while growing up.

“There was no way for them to go but down,” Camara said. “No matter what they did, it would never be good enough.”

Carnevale said he and others involved in the research were not talking about adjusting SAT scores, but, instead, were trying to find a way to determine when a student had encountered such disadvantage in life that his or her test score was much more impressive than it appeared on its face. Among the factors they took into account were the incomes and education levels of the student’s parents, the number of books in the household while the student was growing up, whether the student’s high school was urban or rural, and whether the student attended a school that offered rigorous academic courses.

“This is pretty established social science,” Carnevale said. “We did not do anything nutty.”

The basics of Carnevale’s account of what the striver research had produced were confirmed by Jeff Strohl, a research economist who worked at ETS from 1996 through 2001 and helped Carnevale with the study. Strohl said those involved in the project were “pretty confident” they had found a workable replacement for race-based affirmative action, and he has been able to refine their formula by doing additional work on his own about the identification of strivers.

Strohl said those involved in the research began to hit resistance from within ETS “in the form of obscure technical criticism.” Meanwhile, he said, ETS leaders were not offering any technical support from the nonprofit organization’s staff of hundreds of researchers to help overcome the flaws being identified. The striver research fizzled out over the course of the following year.

Carnevale left ETS in 2004 and is now at the Education Sector, a Washington think tank. He says he is talking about what happened with the striver research now because he is hoping to attract financial support to resurrect the study and work out the revisions needed to develop a striver formula that college admissions offices could use effectively. Reported in: *Chronicle of Higher Education* online, November 2. □

Judith Krug to lead PBK

The Phi Beta Kappa Society elected new officers at its 41st Triennial Council in Atlanta. Allison Blakely is the new president and Judith Krug, editor of the *Newsletter* and director of the ALA Office for Intellectual Freedom, was elected vice president/president-elect. Both will serve three-year terms.

Founded in 1776, Phi Beta Kappa is the nation’s oldest academic honor society with more than 500,000 members and chapters at 276 colleges and universities nationwide. Phi Beta Kappa celebrates and advocates excellence in

the liberal arts and sciences. Its campus chapters invite for induction the most outstanding arts and sciences students at America’s leading colleges and universities. The Society sponsors activities to advance these studies in the humanities, the social sciences, and the natural sciences in higher education and in society at large.

Blakely, a professor of European and comparative history at Boston University, past associate dean of the College of Liberal Arts and professor emeritus at Howard University, has served on Phi Beta Kappa’s Visiting Scholars Committee and as a senator at large since 1994.

Krug, who also serves as director of the Freedom to Read Foundation, regards her position with Phi Beta Kappa as a continuation of her work “to make information available and accessible for all.” “Excellence in education, one of Phi Beta Kappa’s goals, demands access to the full spectrum of information and ideas,” Krug said.

John Churchill, secretary and chief executive officer of the Society, praised the election of Blakely and Krug. “These are two of our outstanding members,” Churchill said, “and both have distinguished records of service to Phi Beta Kappa. I look forward to working with them as they bring their wisdom and experience to the leadership of the Society.”

Phi Beta Kappa stands for freedom of inquiry and expression, disciplinary rigor, breadth of intellectual perspective, the cultivation of skills of deliberation and ethical reflection, the pursuit of wisdom, and the application of the fruits of scholarship and research in practical life. We champion these values in the confidence that a world influenced by them will be a more just and peaceful world. □

(COPA . . . from page 1)

testified that materials with far less sexual content than that appearing on the Web sites of plaintiffs is regularly challenged in libraries and schools as inappropriate for or even harmful to minors. Hence, he concluded, plaintiffs’ fear of prosecution under COPA was reasonable and the act thus had a “chilling effect” on plaintiffs’ right to expression. □

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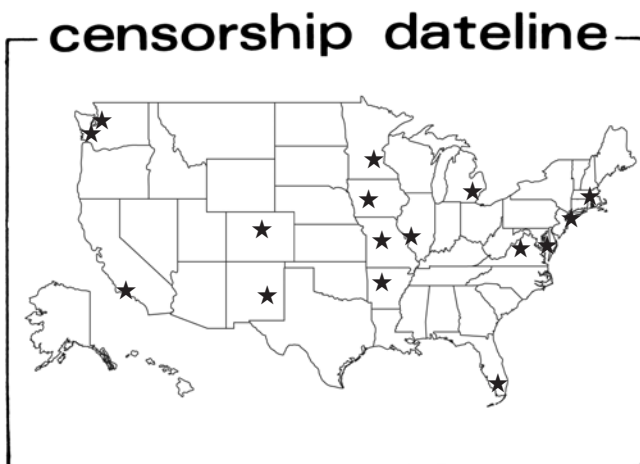
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libraries

Rogers, Arkansas

The board of the Rogers Public Library decided November 22 to retain in the collection the director's cut of the film *Basic Instinct* but to place an adult-content warning label on the video case. The decision came six weeks after complainant Nieves Egelkraut testified at a trustees meeting that she had found the movie pornographic after randomly borrowing it and had worried that teens would come across it in the same manner.

As trustees considered the addition of the warning label, reference librarian Robert Finch remarked, "I really don't have an opinion on this. My job is to find the films that have significant cultural impact."

The board also modified the permission forms that parents and guardians sign for minors so that adults can indicate whether or not they will allow their children to borrow films containing violence, nudity, or sexual or derogatory language.

"I'm sure there are other movies out there that are equally graphic,"

Marsy Humphrey of the library Friends said, but Egelkraut "just hasn't picked them up yet."

Basic Instinct has been checked out twenty-two times since the library added the racy, donated VHS tape to its collection in December. On September 19, Egelkraut

requested that the unrated director's cut edition be withdrawn from the library's offerings, comparing the Academy Award-nominated video to pornography. She told the library board she worries that a teenager will check out the movie.

Library Director Judy Casey said parents can give permission for their children to check out videos—all videos—by checking a box on the children's library card applications. If the parents check "no," the computer will not allow videos to be checked out using the child's library card.

But much of the trouble lies in rating the 1992 video, which stars Michael Douglas and Sharon Stone. The Motion Picture Association of America controls the rating of movies, and slapping on a rating for the unrated film may welcome a lawsuit, Library Director Judy Casey said.

The library added information to the inside of the video's case, and board member Sean Keith read the movie cover that announces cut scenes "too hot to be shown" in the original version. Staff members and board members suggested labeling the film with "Rated R in the original release," "sexual content" or separating the movie based on genre. Casey said she will present several options at the board's November meeting.

Until then, the movie will remain on reserve for board members and staff members.

After the meeting, Egelkraut, originally from the Philippines, said she respects the board members' opinions but still thinks some rating should be put on the video.

Reference librarian Robert Finch, who oversees the library's audio-visual collection, said the movie was added because it was the tenth highest-grossing film of 1992, was nominated for two academy awards, has award-winning actors, was given three out of four stars by Leonard Maltin's 2007 Movie Guide and is rated in the Top 100 Film Noir Movies by the American Film Institute.

"This is one of the movies I'd be hard-pressed not to add," he told board members. The Fort Worth Public Library and the St. Louis Public Library include the director's cut edition in their collections, according to a staff-directed search of library databases.

Board member Scott Greear said he was not prepared to withdraw the movie from the collection. Greear said after the meeting that this was the first withdrawal request he had heard in his eight months on the board. Reported in: *American Libraries Online*, December 1; *Arkansas Democrat-Gazette*, October 18.

Brighton, Colorado

Claudia Speak, a mother of three, says she was angry at what she found inside the August issue of *Muy Interesante*, a Spanish magazine available for checkout at the Rangeview Library in Brighton. Speak said a "provocative" cover of the magazine depicting a woman biting into a banana

caught her attention and upon looking inside she was appalled at what she found.

Although she doesn't speak Spanish and couldn't read the article, she found text with coinciding pictures "of pornographic nature which included two couples engaging in sex, total frontal nudity males and females, gay men in a sexual pose, a cartoon depicting oral sex, three nude women on stage in sexual pose . . . and more," Speak wrote in a letter to the editor October 9.

The article in question, titled "El extraordinario poder del erotismo," which translates to "The extraordinary power of eroticism," explores sexuality between men and women as well as humans and other species. "It was pornography. It was very sexual in nature," Speak lamented. "It wasn't like a naked woman in *National Geographic*."

Brighton branch manager Alex Villagran said the magazine was on a shelf in the adult magazine section of the library, separate from both the children's and teen magazine sections. Speak filed a complaint with the library, and a three-person committee is looking into whether the magazine subscription should be cancelled.

Villagran said a recommendation will be made to the library director for whether the magazine subscription should either be cancelled or retained based on a consensus among the three committee members, but pulling the August edition from circulation isn't an option. "I can't single out the one issue. That would be censoring," Villagran said.

Speak thinks the subscription should stay, but the August issue should be handled in a different manner so that it is not available to kids. "The rest of the articles would be fine," she said, adding that she doesn't think that would necessarily be censorship. "I think discretion is a better word."

"She has the right to voice her concerns," Villagran said. "That's why we have policies and procedures."

Speak said she thinks a suitable solution to the problem would be "listening to what the people of Brighton want and not crying censorship at every little instant. I'm not a fan of book burning or anything like that," she said but added she thinks there are some dangers in having pornographic pictures in the public library. "They investigated Ted Bundy's background and he had a huge pornography collection," Speak said.

Villagran said it's not the first time he's heard complaints about pictures in magazines. He said a couple years ago there was a storm of controversy surrounding "a woman breast feeding her child" on the cover of *Redbook*. He added that *Cosmopolitan* is "always providing tips for women on how to please their male partners."

But Speak said she thinks pornographic pictures, like the ones in *Muy Interesante*, are more dangerous to children than sexual tips in magazines like *Cosmopolitan*. "I think the phrase 'a picture's worth a thousand words' is true," Speak said.

Speak said she couldn't read the article, but judging by

the pictures assumed the text was about the pornography industry.

Villagran estimates that 40 percent of library patrons are Hispanic and/or speak Spanish; however, only 15 percent of the library's literature is Spanish language. "There are some inequities there, but many of our Hispanic patrons are bilingual," he said.

Rangeview Library's Director Michael Sawyer believes the proper policies are in place to handle complaints like Speak's, but pulling one issue from the shelves isn't an option. "If everybody came in and complained and we started pulling everything off the shelves, we wouldn't have anything on the shelves," Sawyer said. "If they're not happy with the decision they do have a right to appeal."

Sawyer said it is the library's position that parents bear the responsibility to keep their children from checking out or viewing things they don't want them to see. "You can go to a science section and find some of these things in a book on human sexuality," Sawyer said. "We don't put signs on things that parents don't want their children to see.

"Somebody could find something about everything in that library to complain about," Sawyer said. "You're not going to satisfy everybody. That's why the library is there to give a wide spectrum of choices." Reported in: *Brighton Standard-Blade*, October 17.

Miami, Florida

The Freedom to Read Foundation has joined the American Booksellers Foundation for Free Expression and other groups in filing an *amicus* brief in the lawsuit against the Miami-Dade County School Board for ordering in June the removal of the children's picture book *Vamos a Cuba* from all district media centers.

The brief, filed November 21 with the U.S. Court of Appeals for the Eleventh Circuit, argues that the book and its English-language counterpart, *A Visit to Cuba*, are "educationally significant and developmentally appropriate" for its school-age audience.

U.S. District Court Judge Alan S. Gold had upheld July 24 the ACLU of Florida's request for an injunction against the decision on First Amendment grounds, but the school board appealed the case, arguing that the book inaccurately portrayed life in Cuba. The FTRF brief contends that "Removal decisions such as the one at issue in this case—which blatantly ignore the recommendations of professional librarians and educators—are not based on objective criteria but rather on subjective, politically motivated agendas."

The American Center for Law and Justice, a nonprofit law firm founded in 1990 by televangelist Pat Robertson, also filed an *amicus* brief with the appeals court October 23 that supports the Miami-Dade school board's decision to ensure that its students receive factual information. Reported in: *American Libraries Online*, December 1.

Shiloh, Illinois

A book about two male penguins falling in love and raising a baby has some parents at Shiloh Elementary School questioning the subject matter. Some parents say *And Tango Makes Three*, a gay-themed picture book that can be checked out of the school's library, tackles topics their young children aren't ready to handle. They asked that it be removed from the regular shelves and restricted to a section for mature issues.

But school officials say it's important to provide diverse reading materials for students: They fear moving the book is tantamount to censorship.

"Please allow us to know when our child is ready for certain introductions," said parent Lilly Del Pinto. "Each of us knows our child best."

Del Pinto said she started reading the book to her kindergarten, who brought it home from the school library earlier in the semester. Mom was surprised by the tale that unfolded. "When it came to the point where the zookeeper saw that the penguins were in love, I redirected (my daughter)," she said. "That was the end of the story for her."

Del Pinto said she's not against gay people nor does she want the book completely banned from the library. But when a child learns about homosexuality should be up to parents, she said. She and a group of like-minded parents approached the Shiloh School Board with their concerns.

A committee of school employees and a parent suggested the book be moved to a separate shelf, requiring parent permission before checkout. Superintendent Jennifer Filyaw rejected the proposal. She said the School Board will look at general library policies, but *Tango* will likely remain on the shelf.

"I feel that a library should represent different aspects of our society," she said. "We in no way want to discriminate against our society." She said one solution might come when the library catalog is updated by the end of the year; parents could restrict their children from checking out certain titles, and this request would appear when the librarian scanned the student's card.

Del Pinto said the school suggested she send a written list of books she does not want her daughter borrowing. She did so but said this won't work because parents can't be aware of every book.

Tango is based on a real story of two male penguins at the Central Park Zoo in Manhattan who exhibited homosexual behavior. They were given a fertilized egg, cared for it and helped raise the chick, named Tango. The picture book is geared at ages four to eight.

It's different from many other gay-themed children's books because it was published by the mainstream press, and homosexuality isn't a source of conflict, said Christine Jenkins, associate professor at the Graduate School of Library and Information Science at the University of Illinois at Urbana-Champaign. She said the characters are just gay and living their lives—the plot doesn't grapple

with being homosexual as do many books for youths of the same nature. Reported in: *St. Louis Post-Dispatch*, November 15.

Marshall, Missouri

Two novels deemed offensive by some members of the Marshall community will not be available to Marshall Public Library patrons while a new policy is hammered out by Marshall Public Library Board members. The two graphic novels in question, *Fun Home*, by Alison Bechdel, and *Blankets*, by Craig Thompson, which were deemed "pornographic" by some members of the community who brought them to the attention of the board and filed a request to have them removed from the library, will be re-evaluated for inclusion on library shelves after the board establishes a "material selection policy."

"We will then have concrete guidelines for their appropriateness and for their placement if they are kept," board president Anita Wright said.

Wright proposed the policy during her opening remarks at the October 11 meeting. Board members voted seven to one, with board member Connie Grisier voting against the motion, to go forward with developing the new policy. A committee made up of most of the board members was formed to write the new policy.

"Research will be done to find out what other libraries throughout the state—and we can even inquire nationally if desired—have done in this arena," Wright said during her opening comments.

Wright said the books in question will be "filed away" and not be made available to anyone through the library until the material selection policy is completed. At that point, the new guidelines will be applied to the books in question and it will be decided if they will be included in the library's collection.

"At no point will the policy be written with an attempt to 'work around' the materials in question," Wright said. "The policy will be written to be a lasting policy for any selections to be made in the future."

Library Director Amy Crump said she fully supports the decision. "I'm happy with the decision," Crump said. "It's a necessary step."

The committee will be initially made up of six of the library board members who volunteered for the committee, along with Crump and library staff members who are currently involved in material selection. Crump said while work on the policy will begin immediately, library policy dictates that the policy be read and discussed and possibly amended by the assembled library board. That process means the new selection policy may take months to become a reality.

"With this proposal I am not trying to 'buy time'," Wright said. "I do not feel that any one of you is unwilling to make a final decision about these items. I make this pro-

posal to allow us to be exacting in what we do and to make a final decision based upon precedence, legalities and what we want this library to stand for.”

Louise Mills of Marshall, who brought the books to the attention of the library board and filed the paperwork to request removal of the books, was in attendance at the meeting which saw nearly ninety people fill the chairs. “The policy is definitely needed because currently anything can be brought in or taken out by Amy,” Mills said of the decision.

Dave Riley of Marshall, who spoke out in favor of keeping the books during a public hearing on October 4, said he supported the idea. When asked about the books being pulled from the shelves while the policy was made, he said, “I understand why. I don’t necessarily agree with it, but I understand it.” Reported in: *Marshall Democrat-News*, October 12.

Harrison Township, New Jersey

A modern translation of one of the oldest known pieces of literature angered at least three parents of Clearview Regional High School students in October, a few days after libraries across the nation observed Banned Books Week.

“I just don’t think this should be in school,” Jennifer Low, mother of a tenth-grade student, said as she held a photocopy of the first section of a modern translation of *The Epic of Gilgamesh*. “I don’t understand how the school can not allow girls to wear spaghetti straps but can allow them to read something so graphic.”

Low, who moved to Mantua Township from Texas in September, said she wasn’t challenging the entire book but a specific section that she says is sexually descriptive and unnecessarily explicit. After Low raised her concern, her daughter was given a different translation contained in a textbook to read. At least one other parent made the same request, and still another high school parent is protesting the use of the material.

“Bottom line, that material is bizarre,” said Jeff Gellenthin, who learned about the material through one of his daughter’s friends. Gellenthin, also of Mantua Township, expressed his concerns in a fiery e-mail sent to the school where he characterized the translation as “pornography” and “sheer smut.”

District officials did not offer specific comment on the issue but did say that concerned parents are encouraged to contact the administration directly.

Low said she does not see why her daughter or any other student whose parents oppose specific sections of the book should have to be singled out. “I think the other parents need to know what their kids are being given to read,” Low said, noting that she would not have been alerted to the content had her daughter not told her that it “made her feel uncomfortable.”

District officials said the particular translation in question has been an approved text in tenth-grade English classes for the past two years. The trade paperback, called *Gilgamesh: A New English Version*, was first published in 2004. Officials said photocopies of particular sections of the text are distributed in class along with the paperback to allow students to mark and make notes on specific areas of the book that teachers are discussing. The section of the text that Low opposes was photocopied and distributed in her daughter’s class.

In addition to the Mitchell translation used by the district, there are more than a dozen versions of *Gilgamesh* available for sale by online bookseller Amazon.com. The work itself dates back to about 1700 BC, some one thousand years before Homer’s *Iliad*. Its Noah’s Ark-type flood story has been known to stir debate, but the book has not been frequently challenged. Reported in: *Gloucester County Times*, October 9.

Clovis, New Mexico

A suspense novel once on the shelves of three Clovis elementary school libraries has been banned following complaints from a Clovis resident. Librarians with Clovis schools banned *Daughters of Eve*, by Lois Duncan, from Clovis elementary schools for content they deemed inappropriate for elementary students, according to Clovis Municipal Schools Superintendent Rhonda Seidenwurm.

The novel will remain on library shelves at Clovis junior high schools and the Clovis High School. “There is no objection (to the book) for older, more mature kids,” Seidenwurm said.

The novel centers around the newest members of an exclusive high school club and the club’s evil leader. Donald Reid said his grandson borrowed *Daughters of Eve* from the Zia Elementary School library. Certain language and suggestive actions in the book are “not appropriate for a fifth-grade student,” Reid said.

Reid never lodged a formal complaint with the schools against the book, but school officials learned of his concerns and decided to review the entire novel to determine if it was appropriate for elementary-aged students, school officials said.

“We want parents to be confident that if their child chooses a book from our library, it is one that will be appropriate for their age level,” said Zia Elementary Principal Jarilyn Butler, who brought the book to the attention of school administrators. Books in many Clovis school libraries are labeled according to reading level, rather than by age appropriateness, school officials said.

However, age appropriateness of reading materials is a factor in choosing books for libraries in Clovis schools, Seidenwurm said. Typically, books are chosen for the libraries by school librarians from national lists of recommended books, she added. “Once in a while something slides through,” Seidenwurm said. “What I am not willing to do,”

she said, “is remove a book from a library just because a particular person is upset about a particular thing.”

Butler said it’s up to school personnel to ensure books are appropriate for children. “*To Kill a Mockingbird* is a great book, but it is not appropriate for elementary school students,” the Zia principal said. “We have to be vigilant.”

Duncan, a former resident of New Mexico, has written more than forty suspense and horror novels for teens and has garnered numerous awards for her work. The film, *I Know What You Did Last Summer*, was based on her novel of the same title.

Duncan said she agreed with the decision. “That’s not an age-appropriate book for elementary school libraries,” she said. Her novels have been lauded for their realistic portrayal of social dilemmas faced by teens and for their moral messages. Reported in: *Clovis News-Journal*, October 6.

Arlington, Washington

Merrylue Martin was driving home from work, absorbed in an audio mystery, when the soothing-voiced narrator she had come to trust let loose. In six minutes, a string of curse words describing a vivid sex scene flew from the narrator’s mouth. “It just hit you out of the blue, and I was like, ‘Oh my,’” she recalled. “My mouth just dropped open.”

She wrote to Sno-Isle Libraries and asked that the audiobook, *Alice in Jeopardy*, by Ed McBain, be removed from the shelves. She had checked the audiobook out from the Arlington branch several days earlier. Her request was denied. She has since appealed to the Sno-Isle Libraries director.

Meanwhile, Martin developed a plan that would let patrons know whether an item they’re considering checking out contains curse words or graphic sex scenes. Ideally, she’d like the library to implement a rating system, similar to the movie industry’s G through NC-17 ratings. At the very least, she’s asking Sno-Isle to keep a list of materials with curse words or graphic sex scenes that patrons can consult before checking out items.

“If they’re not going to stop putting it in the library, at least let me know,” said Martin, who writes and performs Christian puppet plays in her free time. “Don’t just put it on the shelf and hide it.”

Sno-Isle Library director Jonalyn Woolf-Ivory was reviewing Martin’s requests. She said developing a rating system is not feasible. “Last year we purchased just about 300,000 books, and although all of us love to read and to listen, none of us have an opportunity to read all of the books, view all of the DVDs and listen to all the CDs,” she said. “So from a physical standpoint, we just don’t do (ratings).”

Sno-Isle libraries currently label materials aimed at juveniles “J” and those for teenagers “T.” Adults concerned about content should read reviews and speak with library staff to help weed out material they may find offensive, Woolf-Ivory said.

Alice in Jeopardy, which came out last year, has been well reviewed. Woolf-Ivory pointed to glowing reviews in *Library Journal*, *Publishers Weekly*, *Booklist*, and *Kirkus Reviews*. None mentioned sex or obscenities.

As part of her campaign to change library policy, Martin bought a used copy of *Alice in Jeopardy* and typed out portions of five of the paragraphs to which she objected. She highlighted curse words in red type and replaced some of their letters with asterisks. Nonetheless, Martin hides the passages under cover sheets reading, “Warning: Adult Content References in the Following Text.”

The American Library Association opposes book ratings. The oldest and largest library organization in the world, the ALA is against warning systems that could bias readers against certain materials. “If you don’t like something, no one says you have to read it,” said Judith Krug, director of the Chicago-based organization’s Office for Intellectual Freedom. “So put it down and pick up something that is less offensive.”

Regardless of the outcome of her appeal, Martin says she won’t stop working to keep the issue in the public conscience. She also can appeal Woolf-Ivory’s decision to the library board.

Martin hasn’t visited the Arlington Library since returning *Alice in Jeopardy*. She said the quaint building is “adorable” and she wishes she felt comfortable returning. However, she’s not willing to risk checking out items that may contain obscenities. So she’s joined an online audiobook rental system, similar to Netflix, that includes ratings.

Martin’s request for reconsideration was the eighth the Sno-Isle Library System received in 2006. Hers is the first formal complaint both Sno-Isle and the American Library Association have received on *Alice in Jeopardy*. In the last seventeen years, just two items have been removed from Sno-Isle through the request for reconsideration procedure, according to Sno-Isle Communications Relations Manager Mary Kelly. Reported in: *Everett Herald*, October 11.

Puyallup, Washington

A group of Puyallup teachers is preparing to challenge whether a novel that starts in the slavery era is appropriate for eighth-grade students. The objection followed the school district’s disciplining of a teacher who expressed concerns about the use of racial slurs and sexual situations in the book.

The Autobiography of Miss Jane Pittman, by Ernest J. Gaines, will be required reading for the first time this spring for all eighth-grade students. It will be used in a district-wide reading assessment. The novel depicts the lives of blacks in the decades between the Civil War and the civil rights movement through the eyes of a fictional 110-year old woman, Jane Pittman. It was published in 1971.

Eighth-grade honors English teacher Donna Helgesen was placed on administrative leave for two days after voicing concerns about the book at a meeting with parents. At a September 14 back-to-school meeting with parents, Helgesen told parents that she wasn't comfortable teaching the novel, fellow teacher Carole Stratford said. A parent asked why she was disturbed by it. Helgesen said racial slurs and stereotyping are used throughout the book, as well as scenes of sex, rape and implied incest, Stratford said.

The next day, Helgesen was called to meet with the school principal and Gerald Denman, the district's director of diversity affairs. Denman said Helgesen was to be put on two days' administrative leave for using her classroom as a public forum to express personal opinions on district material, Stratford said.

The Autobiography of Miss Jane Pittman is one of twenty-seven books adopted in 2003 by the School Board for the 21st-Century Novels curriculum. A district committee reviewed seventy "multicultural" novels, defined by its members as books written by people who are members of the culture they seek to represent, said Leska Wetterauer, Puyallup's executive director of secondary student learning.

The committee was convened in 1999 and reviewed the books over four years and thirty meetings. The review was initiated before a 2002 legal settlement that required the district to make extensive changes to create a better environment for minorities.

The settlement required that the district adopt a set of multicultural literary works "that are age appropriate and relevant."

It was the first time Puyallup adopted a district-wide reading list for specific grades, Wetterauer said. Each novel is tied to state learning standards. Teachers must choose two out of four or five each year for students to read.

The district will create a reading test that requires students to have read a specific novel in each grade. The Gaines novel was selected for eighth grade.

Stratford and eight other teachers plan to challenge whether the novel is appropriate for the eighth grade. The book went previously unquestioned because it was optional, and most teachers avoided it, Stratford said. She doesn't dispute that it is an educational portrayal of the treatment of blacks. But it will be difficult for many thirteen-year-olds to fully appreciate the context of the book through its graphic language and situations, she said.

The Gaines novel "is eye-opening. It's well written. You do feel the pain," she said. But "as an adult, I have such a depth of perception and knowledge, and have lived through the civil rights movement."

Stratford's husband, Tim Stratford, also teaches in the district at Ferruci Junior High. He told the school board that sensitivity training offered to educators who'll teach the book isn't an adequate solution. In fact, past trainings mandated by the lawsuit settlement made teachers wary of racially sensitive situations.

"In addition to (the novel's) controversial content, they do not want the personal liability that would accompany a lawsuit against the district," he said.

In an e-mail to the school board president, Superintendent Tony Apostle said he expects teachers to follow the district's multicultural curriculum. "This novel is a significant masterpiece of American literature and it belongs in the eighth grade," Apostle wrote to school board President Diana Seeley September 24. "We also need teachers who (are) confident, capable and competent in teaching this literature to students," he continued. Reported in: *Tacoma News-Tribune*, October 16, 25.

schools

Carroll, Iowa

Students at Carroll High School are fighting their superintendent's decision to ban a novel written by an Iowa native from their literature class with the Internet. *What's Eating Gilbert Grape* was pulled from the high school's literature-to-film class by Superintendent Rob Cordes because he said there were concerns expressed by parents about an oral sex scene. Cordes acknowledged that he didn't read the entire book before making his decision.

The 1991 book, written by Peter Hedges, deals with a young man's experiences with his troubled family in a small Iowa town. It is still available at the school's library, and many students have bought copies for themselves.

Students started an Internet protest on the social network Facebook. Nearly 250 people have joined the group—"Un-ban Gilbert Grape! Censorship Is Wrong"—and organizers say they plan to collect signatures for a letter calling for a formal school district review of Cordes's decision. The mission statement for the group says it is for anyone who thinks pulling the book from the school curriculum is wrong.

"Parents were already notified of its content, and had to sign a permission slip for their child to read it. The idea that a very small minority of students can dictate the curriculum of the entire school is ludicrous," the statement says. "In a school district with ever decreasing reading test scores, and an increased emphasis on reading such as mandatory free reading in homeroom, why is the district shooting themselves in the foot by taking away some of the few books which make the average student actually enjoy and want to read?"

Students from Carroll High School, Kuemper Catholic High School, Glidden-Ralston, Audubon, other schools and local high school alumni now in colleges and universities around the country have become "members" of the Web group. Students from high schools in other states, such as Colorado, also have joined.

Many “Gilbert Grape” Web participants likely will sign the letter, said Carroll High School senior Adam Lange, the student body treasurer and one of the Facebook group’s administrators.

Several students have been wearing T-shirts emblazoned with free-speech quotations in recent days, said senior Kellie Proctor, eighteen, who found a number of the free-speech quotations and created the T-shirt messages. The shirts proclaim ideas like, “Censorship feeds the dirty mind more than the four-letter word” and “Think for yourself and let others do the same” and “books won’t stay banned and ideas won’t go to jail.”

At a school board meeting, one parent, DeAnn Pudenz, compared *What’s Eating Gilbert Grape* to *Penthouse* magazine, and held copies of both up before the board to make her point.

Lange said the book connects with many young people. “It’s one of the few books the majority of my peers enjoyed and read,” said Lange, who is active in many high school activities. Lange took the class in which the book was taught last year and said portions of the story that dealt with the disabled were meaningful because he has a relative with cerebral palsy. Lange, who plans to attend Grinnell College after graduation, said the book isn’t erotica, but rather a work of fiction that approaches life honestly.

“If asked about *Gilbert Grape* two years later, I would not have thought about sex,” Lange said. “To be honest I heard much worse riding a public school bus in third grade.”

Lange said he is pleased a number of college students with Carroll-area ties have indicated support on Facebook. “When we’re in college, we’re going to face much worse material than a couple of paragraphs in a book,” Lange said.

Katie Naberhaus, an eighteen-year-old senior planning to attend the University of Iowa, said the book is one students read without prodding from educators. “I don’t like to read fiction books for the fun of it, but it was one of the few books I actually really enjoyed,” Naberhaus said. “I read another book by Peter Hedges, *An Ocean in Iowa*, after that. It got me to read another book.”

“The most absurd thing I have heard so far is the comparison to a pornography magazine,” Lange said. “I think I have lost a little respect for Mr. Cordes after the stunt he pulled.” Reported in: *Cedar Rapids Gazette*, November 23.

Sherborn, Massachusetts

So Far from the Bamboo Grove, by Yoko Kawashima Watkins, has been part of the sixth-grade English curriculum at Dover-Sherborn Middle School for a number of years, according to English teacher Amanda Gees, but because of recent objections from parents, a subcommittee at the middle school voted unanimously to remove the book from the curriculum. It will, however, remain in the middle school library.

“The decision was not made lightly,” said middle school parent Sheila Jung in a letter to parents. “It was based on reams of research and facts. It was morally right to make this decision.”

Parents such as Jung object to the content of the book, which follows the eleven-year-old author’s childhood in war-torn 1945 Korea, chronicling Watkins’ struggle for survival amid violence between Japan and Korea. It is part of the state’s recommended reading list for the grade level, but was deemed inappropriate by the panel due to scenes hinting at rape and violence against women by Korean men.

“We have been studying this book with students for thirteen years and it is an integral part of the sixth-grade experience,” Gees wrote in an e-mail defending the book. “The entire year is spent working on helping the students to deal with how unacceptable it is to judge each other by race, religion or appearance.”

“This is not a racist book,” Gees said. “It is not meant to deny what the Japanese people did to the Koreans, and it is not meant to vilify the Koreans or other combatants who worked to liberate Korea. It is meant, instead, to provide a glimpse of the horrors of war from one young girl’s perspective.”

The issue of whether to ban *So Far from the Bamboo Grove* drew plenty of attention at the Regional School Committee meeting in November. Copies of the board’s policy regarding the selection process were handed out by Superintendent Perry A. Davis, and there was a formal memo detailing the decision of the board charged with looking into the controversy.

According to the memo, the book review committee recommended that the school select an alternate book to address the grade six English Language Arts unit learning objectives; and that the book remain part of the middle school library, but not be used as part of a grade six English Language Arts unit.

“The book was never taught as part of the history curriculum. It is a work of historical fiction, and was used as part of a literature unit on survival,” the memo said.

According to the review committee, there were thirteen complaints about the book.

The book is the story of an eleven-year-old Japanese girl whose family has to flee Korea in the aftermath of World War II. The journey is fraught with danger and persecution because of the Koreans’ animosity toward the Japanese, who had occupied their country for more than three decades. The book is based on the real-life experiences of Watkins, whose father was a Japanese government official.

Dover-Sherborn middle school students have read the book as part of a unit on stories of survival and have met the author. The book is used by numerous other school districts in the state.

During the school committee meeting several parents and teachers defended the book as well as the two-day annual visit made by the author, who is an anti-war activist,

to talk about it. Karen Masterson told the committee that her children read the book in school years ago and that they recall it as “one of their best educational experiences.” She said it “ignited a love of reading” in her daughter. Her voice shaking with emotion, she added, “A single book is not supposed to be all things.”

Scott Walker, who has been teaching sixth-grade English for five years, told the school committee that both the book—which he said has been taught “effectively and tastefully” for thirteen years—and the author are prized by students. “She is a gift our youngsters hold onto far beyond their time in our classroom,” he said, adding that older students come back to the middle school to see her during her visits.

Frederick Randall, the middle school headmaster who was also on the book review committee, said the panel had struggled with its recommendation. “I won’t represent it as being an easy process on any of us,” he said. “As a committee, we did the best we could with it, to remain objective.” But he said there simply wasn’t enough time in school to explore the issues raised by the book.

Henry Jaung, the father of a sixth-grader, told the committee that he didn’t think rape and other war atrocities were appropriate subject matter for such young children. “In my humble opinion, sixth-graders aren’t equipped,” he said. He also said he didn’t understand why the school district sought parental permission before teaching a class on personal hygiene to fifth-graders but had offered no similar input for issues of rape and the complexities of war.

In one scene in the book noted by Jaung, the sister of the main character says: “We must get out of Seoul. I saw several Korean men dragging girls to the thicket and I saw one man raping a young girl. . . . The girls were screaming for help in Japanese.” Jaung said the book gives a distorted view of what happened, all the more troubling because it will be the students’ first exposure to Asian history.

“You’ll notice throughout the book these acts are committed by Korean men—it is a pretty disturbing connotation of a group of people,” he said. “The first impression you imprint in a child’s mind is typically very hard to erase.”

Agnes Ahn, the other parent who spoke at the meeting, said her Korean-American son was made fun of at school because of the book and got the cold shoulder from a teacher because of the controversy over it. “What if your favorite teacher no longer says hi to you?” she asked the committee.

Sam Yoon, a member of the Boston City Council and a leader in the state’s Korean-American community, was contacted by the parents who are concerned about the book. He said the book is one-sided, representing Koreans as the wrongdoers when it was the Japanese who occupied Korea.

“For me, the issue is about a child’s self-image with respect to their ethnicity,” Yoon said. “This book doesn’t put that story in that context. It’s confusing. . . . One ethnic minority is portrayed as . . . the bad guys.”

Kathy Glick-Weil, president of the Massachusetts Library Association and director of the Newton Free

Library, said she’s heard of other challenges against the book. But she argued that a controversial book should be used to spark discussion, and a school could bring in someone to express the opposite side.

“It certainly sounds like an important issue for young people to discuss and understand: Is this an opinion we agree with or we don’t agree with? Is it even handed or not? I don’t think you’d want to remove a book that encourages that kind of discussion and intellectual pursuit.”

Both the School Committee members and the parents said they had no objection to the book remaining in the school library. Reported in: *Boston Globe*, November 12; *Dover-Sherborn Press*, November 16.

Taylor, Michigan

Forever praised and forever controversial, *The Adventures of Huckleberry Finn* has been pulled from classes in Taylor because of complaints about its liberal use of common racial slurs.

Taylor School District officials halted instruction of the book some consider the Great American Novel after at least one African-American parent complained about the racial epithet that’s repeated more than two hundred times on its pages. The book has been taught in the district for years without incident.

The controversy began when an English teacher decided to have a class read the book aloud and act it out. The class had an African-American student who would regularly hear classmates repeat the slurs.

“We want to be sensitive to how the children feel,” said Lynette Sutton, assistant superintendent for secondary instruction.

Some parents and students in Taylor, however, are upset about the decision. The ten-thousand-student district is 74.5 percent white, 20 percent African-American and 4 percent Hispanic, according to the district. Parent Cyndee Push said school officials in her daughter’s eleventh-grade class told students not to discuss the decision.

“She said, ‘Mom, it’s a good book; there are other books on the shelves that have worse words in it,’” Push said. “It didn’t sound like the teachers were happy about it, the kids weren’t happy about it, nobody was happy about it.”

“We all read this book as a kid—I want to see this book on the shelves. It’s about what it was like then. I don’t think it should be removed, it should just be discussed.”

Jim Netter, the former chairman of the Legal Redress Committee for the Western Wayne County chapter of the NAACP, said he doesn’t think the book should be banned, either, as long as rappers toss racial slurs around in their lyrics. “We say nothing when it’s in rap songs, but we want to burn the books of history,” Netter said.

To ban the book “would be to deny all points of history such as the (history) of Rosa Parks and her humiliation, the *Brown v. Board of Education* decision as well as *Plessy v.*

Ferguson,” he said. “The real story was to set Jim free. (The book) is necessary in order to show the unfortunate truth of American history and to bring it to modern history.”

Kathy Ladd, English Department chair at Stevenson High School in Livonia, has taught the book for more than three decades and said it’s a product of its time that deserves to be studied. “This is an old, old controversy—it goes back to the ’60s, and I think it’s unfortunate that it can get in the way of teaching what many believe might be the greatest American novel, by the greatest American author,” she said.

“It’s a picture of a world, that’s what it is. You’re getting a view of how people lived; it reflects not only the times, but also the mood of the times. Kids deserve to be presented with tough issues. They do not deserve to be sheltered.”

Lawrence Berkov, a professor emeritus who teaches Twain at the University of Michigan-Dearborn, said good teachers shouldn’t be intimidated by language in the “brilliant” and “profound” book. “The fact that the (word) is used in the novel is disturbing, but it’s the job of the teacher to explain why,” Berkov said. “The fact that an ugly word appears is no reason at all to ban the book.”

The Taylor district is also reviewing other books in its syllabus that could be offensive. “We’re trying to see very clearly either side of this situation, and I’m not sure what the right decision really is,” Superintendent Lee Lewis said. Reported in: *Detroit News*, November 2.

Eagan, Minnesota

After a parent complained about the “sex, death and general mayhem” in newspapers, a suburban elementary school decided to cut off students’ access to free copies provided by the *St. Paul Pioneer Press*.

The Pioneer Press had been available to students for several years at Deerwood Elementary School in Eagan through its Newspapers in Education program. All kids had to do was pick up one of the thirty copies left daily on a counter in the media center.

“There are many great articles in the newspaper that are appropriate for elementary students,” Principal Miles Haugen said. “However there are some articles in there that we would not want exposed to elementary-aged students.”

The parent of a seven-year old sent the school an e-mail complaining that the newspaper is “not appropriate reading material for elementary-aged kids.” Deerwood Elementary’s media director offered to not make the paper available to her child, but continue allowing other students ready access to the newspaper. The parent rejected that, saying it “would silently endorse the kids reading them. It’s like leaving a loaded gun on the table.”

Forbidding her child “to take one will only make the paper a fascinating forbidden fruit,” the parent, who was not named, said. “We don’t want (child’s name) exposed to the sex, death, and general mayhem that have become the

standard fodder for newspapers and TV news. We are not just trying to protect our child but all the kids (child’s name) goes to school with and lives in the world with.”

The principal then blocked all students from having ready access to the newspapers. They are now left behind the counter, where they remain available to teachers and staff. Haugen said students can still see them, if they ask.

“I’m sure there might be some schools that have the newspaper available,” Haugen said. “The thing that I have a concern about is that a student, randomly picking up a newspaper and a six- or seven-year-old picking up a newspaper and finding ads about some sex scandal in Washington.”

Managers at the newspaper weren’t aware of such restrictions at any other school. *The Pioneer Press* said Newspapers in Education delivers thousands of free newspapers to hundreds of area schools, mostly so teachers can use them in their classrooms as a resource.

“Sometimes people are going to read things they don’t want to see,” said Randy Johnson, who manages the program. “It’s the nature of the beast, I guess. But I guess you just have to go on.”

It’s up to each school to decide how the newspapers in the program are used, Johnson said, but added that he sees great value in putting newspapers in classrooms. “It’s a daily textbook. It’s one of the greatest ways of teaching kids current events. It’s used for teaching students how to read,” he said.

Colleen Kingsbury, who has two daughters at Deerwood Elementary, said she intended to go there Friday to object. “I really resent this decision that the principal has made, especially given the fact that it’s based on the opinion of one parent,” she said. Reported in: *Minnesota Star-Tribune*, October 20.

Albemarle County, Virginia

The Albemarle County School Board has pushed back in the division’s curriculum a book with controversial content, spurring a debate over the age-appropriateness of material with sexual innuendo and fictional online chat room chatter. *Romiette and Julio*, a modern-day version of the Shakespeare classic, was part of a supplemental list of books that children could read in their summer before sixth grade.

Susan Luekenbach, the mother of a son in sixth grade at Jack Jouett Middle and one in eighth at Sutherland Middle, told the board she was disturbed that sixth-graders are exposed to the book’s content. She cited an excerpt from the book that portrays an Internet chat room:

“Oogacoga: Why you down, baby?”

“Spiceboy: She needs some love

“Bigmac: let me make your dreams come true

“Niobe: you ain’t my kind of dream. You are a nightmare!

“Bigmac: you just wish you could have me”

The book is about the hardships that a black teenage girl and a Hispanic teenage boy face as a couple, challenges created by friends, parents and societal expectations. Romiette is the granddaughter of college professors, while Julio is a transfer student from a gang-ridden high school. The two meet in an Internet chat room.

“The values it teaches are not appropriate for this age group,” Luekenbach said. “How many of you would leave your sixteen-year-old daughter or son alone with a boyfriend or girlfriend you have met for the first time, or any friend for that matter?”

Superintendent Pamela R. Moran said a committee reviewed the book and found it age-appropriate. Moran upheld the committee’s suggestion for no change, and the School Board voted, 4–2, to move it to the division’s sixth-grade, second semester curriculum. It was originally part of a summer reading book list that students could read after fifth grade.

The book’s author, Sharon Draper, has taught junior high and high school for more than thirty years. She has been named the National Teacher of the Year and is a three-time winner of the Corretta Scott King Literary Award.

School Board member Jon Stokes said he would not be comfortable with his eleven-year-old son reading the book and recommended it for the seventh-grade list. Stokes said the issue is trying to balance the book’s reading level with its content.

When the excerpt was read to her, Western Albemarle High senior Liza Dunsmore recognized the sexual innuendo. She also said her brother and sister, both in sixth grade, would be mature enough to handle it, and Dunsmore said they could talk about it with their mother or father. Reported in: *Charlottesville Daily Progress*, November 20.

broadcasting

Los Angeles, California

A documentary on the backlash against the Dixie Chicks after critical remarks the group’s lead singer made about President Bush has brought disharmony between the film’s distributor and two TV networks. On October 26, Weinstein Co. alleged that NBC and the CW had refused to air nationwide commercials to promote “Shut Up & Sing.” Weinstein said NBC wrote that the network “cannot accept these spots as they are disparaging to President Bush.”

The CW also rejected the ads, Weinstein said, saying in a letter that it did “not have the appropriate programming in which to schedule this spot.” Harvey Weinstein, who runs the company with his brother, Bob, said the networks were stifling free speech.

“It’s a sad commentary about the level of fear in our society that a movie about a group of courageous entertainers who were blacklisted for exercising their right of

free speech is now itself being blacklisted by corporate America,” he said.

CW spokesman Paul McGuire denied that network executives refused to run the spot. He said Weinstein Co.’s ad agency inquired about running a spot, but chose not to. “They weren’t interested in running a national spot on the CW. What’s in their press release is a mystery. It’s inaccurate,” McGuire said.

CBS and MTV Networks agreed to run the ads nationwide, while local affiliates have been running the commercials in Los Angeles and New York. The CW network airs on TV stations owned by CBS and the Chicago-based Tribune Co.

The ninety-three-minute film chronicles the behind-the-scenes aftermath of controversial comments made during a London concert on the eve of the Iraq invasion in 2003 by singer Natalie Maines. She told the audience that she was ashamed that Bush was from her home state of Texas. That brought a backlash from country fans, radio disc jockeys and some of the Dixie Chicks’ peers. Some radio stations refused to play the group’s records, with threats allegedly made against the three members. Reported in: *Los Angeles Times*, October 27.

Washington, D.C.

The Parents Television Council filed indecency complaints October 12 against programming that aired on My Network TV and NBC over “illegal obscenities” that it claims aired on the networks before 10 P.M.

The NBC infraction was the use of the word “tits” on *ER*, and “shit” on My Network TV’s telenovella, *Desire*. PTC can complain about *ER* because even though it airs on the East and West Coasts in the 10 P.M.–6 A.M. safe harbor for indecency, it airs at 9 P.M. in the Mountain time zone. *Desire* airs at 8 P.M. EST.

The FCC is currently rethinking several profanity findings after it asked a court to let it do so. During that time, it is not expected to come out with any profanity-related decisions, but the FCC also has indicated broadcasters don’t have a free pass to swear, either.

PTC points out that the swearing was in scripted shows rather than the inadvertent cussing that sometimes slips through on a NASCAR or NFL telecast. PTC’s Dan Isett also says the V-chip would not have blocked the broadcasts because their TV-14 ratings did not contain the “L” language descriptor.

PTC filed the complaints against Washington’s My Network TV affiliate WDCA. The complaint against *ER* came from the Central/Mountain time zone, but PTC did not have the call letters immediately available. Reported in: *Broadcasting and Cable*, October 12.

(continued on page 31)

from the bench



U.S. Supreme Court

The Supreme Court refused November 27 to stop a federal prosecutor from reviewing the telephone records of two reporters for *The New York Times*. The records, the newspaper said, include information about many of the reporters' confidential sources. In a one-sentence order offering no reasoning and noting no dissenting votes, the Supreme Court rejected a request from *The Times* to stay a lower court's decision while the paper tried to persuade the justices to review the case.

The order effectively allowed the United States attorney in Chicago, Patrick J. Fitzgerald, to begin reviewing the records, which he has already obtained from the reporters' phone companies.

The Justice Department told the Supreme Court that Fitzgerald was under enormous time pressure. "The statute of limitations," the government said, "will imminently expire on December 3 and 13, 2006, on certain substantive offenses that the grand jury is investigating."

The grand jury, in Chicago, is looking into who told the reporters, Judith Miller and Philip Shenon, about actions the government was planning to take in December 2001 against two Islamic charities in Illinois and Texas. The disclosures to the reporters, the government lawyers wrote, may have amounted to obstruction of justice.

In August, a three-judge panel of the federal appeals court in Manhattan ruled, 2 to 1, in favor of Fitzgerald, saying that the reporters were not entitled to shield their sources

in the unusual circumstances of the case. The government contended that the reporters had tipped off the charities to the impending actions against them. The *Times* said the reporters had engaged only in routine newsgathering.

The appeals court also rejected *The Times's* argument that the grand jury subpoenas, issued directly to the phone companies, were too broad. The subpoenas, the government said, covered eleven days in September and December 2001. Lawyers for *The Times* said the requested records could expose scores of confidential sources, most of them unrelated to the two charities.

The appeals court responded by sending the case back to the trial judge to allow *The Times* an opportunity to black out information concerning those other sources. But because that exercise would, in effect, identify the sources of interest to Fitzgerald, lawyers for the paper have indicated that they will not cooperate.

Miller, who retired from *The Times* last year after serving eighty-five days in jail in connection with an unrelated leak investigation also supervised by Fitzgerald, said the phone records by themselves might not satisfy the government.

"It doesn't end there," Miller said. "Then there will be subpoenas for, 'What did you say to that person?'"

The decision was the latest in a series of setbacks for the press in the federal courts. "It's more bad news for the First Amendment," Miller said, "and therefore it's more bad news for the public's right to know."

Floyd Abrams, a lawyer for *The Times*, said the decision was a battle lost in a larger war. "This case is the latest of a number of skirmishes in an ongoing and far from concluded conflict about the public's right to information," Abrams said. "We remain hopeful that in the end, whether in the courts or in Congress, that right will be vindicated." Reported in: *New York Times*, November 28.

The American Library Association, the Electronic Frontier Foundation (EFF) and a coalition of nonprofit organizations asked the U.S. Supreme Court November 13 to hear a case challenging a secret law governing travelers in American airports.

The case centers on the Transportation Security Agency (TSA) requirement that travelers show identification before boarding commercial aircraft. So far, the TSA has refused to disclose the terms of the identification requirement to the public, claiming that they are "sensitive security information." The *amicus* brief urging the Supreme Court to hear *Gilmore v. Gonzales*, demonstrates that Congress never intended agencies to have unfettered discretion to impose requirements upon the public without allowing the public to review them.

"The TSA is allowed to withhold some information from the public, but only in cases where transportation security is at risk," said EFF Staff Attorney Marcia Hofmann. "Simply showing Americans the rules they must follow can't possibly compromise security. The real danger here is meaningless secrecy, which can hide security flaws, frustrate the

justice system, create confusion, and undermine government accountability.”

The Constitution and laws like the Freedom of Information Act (FOIA) prohibit the government from imposing secret laws on the public. But if the lower court decision permitting the secrecy is allowed to stand, it opens the door to other government agencies creating undisclosed rules and regulations without oversight.

“‘Security’ shouldn’t be a magic password allowing the government to escape accountability,” said Hofmann. “The Supreme Court should hear this case and review why the TSA insists on keeping this basic information secret.”

The amicus brief also was signed by the American Association of Law Libraries, Association of Research Libraries, Center for Democracy and Technology, National Security Archive, Project on Government Secrecy of the Federation of American Scientists, and Special Libraries Association. Reported in: *Magic City Morning Star*, November 14.

speech

San Diego, California

A San Diego federal judge has rejected a radical activist’s request to invalidate a law making it illegal to tell people how to make a firebomb with the intention that they go out and commit a violent crime. Rodney Coronado, of Tucson, Arizona, argued that the law infringed upon the First Amendment protections of free speech.

Judge Jeffrey A. Miller sided with prosecutors, who said the law was tailored to apply to specific criminal activity, which the government has a responsibility to control.

The law, enacted after the 1995 bombing of a federal building in Oklahoma City, makes it a crime to “teach or demonstrate” how to make an explosive, destructive device or weapon of mass destruction with the intention that the information be used to commit a federal crime of violence.

On August 1, 2003, Coronado gave a speech during which, in response to a question from the audience, he demonstrated how he made a gasoline-fueled device he used to burn down a Michigan State University laboratory in 1992. Hours earlier, an arson fire destroyed a huge housing complex under construction in University City, causing \$50 million in damage. A group for which Coronado has acted as spokesman, the Earth Liberation Front, or ELF, took credit.

Coronado has not been charged in connection with that arson, but he was charged with breaking the law on telling people how to make a destructive device. His lawyer, Gerald Singleton, argued that he was within his First Amendment rights to talk about the Michigan arson, for which he served a prison term.

Miller disagreed.

“Here, the deterrent effect of (the statute) on legitimate expression is insubstantial and remote,” he said. He also ruled that other objections to the law will be decided after witnesses testify at a trial, which has not been scheduled. Reported in: *San Diego Union-Tribune*, November 16.

terrorism

Washington, D.C.

President Bush lacks the constitutional authority to designate groups and persons as terrorists under a post-September 11 executive order, according to a federal judge in Los Angeles. U.S. District Court Judge Audrey B. Collins, in a challenge brought by the Washington, D.C.-based Center for Constitutional Rights on behalf of the Humanitarian Law Project, said a September 24, 2001, executive order naming twenty-seven groups and persons as “specially designated global terrorists” (SDGTs) allowed no way for those designated to challenge the ruling.

In a forty-five-page ruling, Judge Collins said the executive order “contains no definable criteria” to constrain the president’s use of it, and, as a result, “is unconstitutionally vague on its face.” She said the order is subject only to Bush’s “unfettered discretion.”

The judge also said the order “contains no definable criteria for designating individuals and groups as SDGTs,” and improperly gives the Secretary of the Treasury the power to impose penalties for “mere association” with the groups.

The ruling, made public November 28 came in a lawsuit in which the Humanitarian Law Project, through the Center for Constitutional Rights, sought to support the nonviolent work of two groups designated as terrorist: The Kurdistan Workers Party, the main Kurdish political party in Turkey, and the Liberation Tigers of Tamil Eelam, a rebel group fighting for a separate homeland for Tamils in Sri Lanka.

“This law gave the president unfettered authority to create blacklists, an authority President Bush then used to empower the Secretary of the Treasury to impose guilt by association,” said David Cole, a Center for Constitutional Rights board member.

“The court’s decision confirms that even in fighting terror, unchecked executive authority and trampling on fundamental freedoms is not a permissible option,” he said.

The Justice Department said the agency thought Judge Collins had erred in her decision.

Days after the September 11 attacks, Mr. Bush invoked his authority under the International Emergency Economic Powers Act and issued Executive Order 13224, declaring that the “grave acts of terrorism” and the “continuing and immediate threat of future attacks” on the United States constituted a national emergency. He blocked all property and interests in property of twenty-seven groups and persons,

each of whom were identified as terrorists. He also authorized the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, to designate additional terrorist groups and persons under the order.

Judge Collins did let stand some sections of the order that penalize those who provide “services” to designated terrorist groups, including humanitarian aid and rights training.

A former Los Angeles prosecutor nominated to the federal bench in 1994 by President Clinton, Judge Collins is the first judge to declare any section of the USA PATRIOT Act as unconstitutional. In a January 2004 decision, she declared unconstitutional a PATRIOT Act provision that forbids giving advice or assistance to groups identified as foreign terrorist organizations by the U.S. government.

In that ruling, she said the provision was too vague to enforce and violated the Constitution’s First and Fifth amendments, which protect freedom of speech and defendants from self-incrimination, respectively. Congress revised the act last year in response to her rulings and the case was sent back to District Court. The matter is still being litigated. Reported in: *Washington Times*, November 30.

student press

Bakersfield, California

A Kern County judge issued a court order November 16 that will ensure that Bakersfield high school students are not wrongly censored and that student free speech rights in the Kern School District are preserved. The final step came a year-and-a-half after the American Civil Liberties Union of Southern California, the ACLU’s national Lesbian Gay Bisexual Transgender Project, and the law firm Milbank, Tweed, Hadley & McCloy LLP filed a lawsuit after student journalists and their interview subjects were prohibited from publishing a series in the East High School student newspaper, *The Kernal*, about sexual orientation and gender identity. East High School is part of the Kern School District in Bakersfield.

“This is a momentous day,” said Christine Sun, the ACLU of Southern California attorney who represented the six students and their coplaintiff, the Gay-Straight Alliance Network, throughout the fight. “From day one the students knew they had been wrongly censored and vowed to make sure this didn’t happen to the next generation of Kern students. Under this policy, the students would not have been censored in the first place.”

Maria Krauter, former editor-in-chief of *The Kernal*, added: “Even though I’m in college now, I really wanted to make sure that future newspaper staffs could write about serious topics like sexual orientation in a meaningful way without worrying that they would be censored. Now I know that’s the case.”

The agreement, which was signed by the ACLU, Milbank, and the Kern High School District and was filed with Superior Court Judge Sidney P. Chapin, affirms that “all students have the right to exercise freedom of speech and of the press” and that school officials may turn to censorship only as a last resort.

It states: “Prior to any restriction of student speech, school officials will consider all practical alternative options, and, where feasible, will implement any such practical alternative options instead of restricting the speech.”

The ACLU’s Sun said the legally binding agreement came about as part of settlement discussions between the ACLU and the District this fall. Part of the settlement included a change to the district’s free speech policy, which the Kern High School District trustees drafted and approved in October.

“This consent decree is a victory for students’ free speech rights and sets an important example for other school districts that school officials must take proactive steps to protect students from harassment and threats of violence before resorting to censorship of students’ free speech,” said Carolyn Laub, executive director and founder of the Gay-Straight Alliance Network. Nearly six hundred schools in California have Gay-Straight Alliance clubs.

Students originally sought to publish the articles in the second-to-last edition of the paper during the 2004–05 academic year, but could not after the East High principal, citing vague threats to gay students, demanded the students pull the articles. The student journalists and their sources went to court seeking an order allowing them to publish the articles in the final edition of the paper.

The court denied the request, stating that more information about the district’s reasons for censoring the articles was needed. Over the summer and fall, school officials failed to produce evidence of their claims that lesbian, gay, bisexual, and transgender students would be harmed as a result of the publication of the articles. The lawsuit also revealed that the principal took no steps to inform those students’ parents or the police officer assigned to the school of the alleged threats. In October 2005, the school relented and informed members of *The Kernal*’s editorial board that the articles could be printed.

The students continued the lawsuit in order to obtain a policy that would prevent other students from being wrongfully censored, a goal that they achieved with the consent decree. Reported in: ACLU Press Release, November 16.

Internet

San Francisco, California

The California Supreme Court ruled November 20 that bloggers and participants in Internet bulletin board groups cannot be sued for posting defamatory statements made by

others. In deciding a case closely watched by free speech groups, the court said a federal law gives immunity from libel suits not only to Internet service providers, like AOL, but also to bloggers and other users of their services.

“Subjecting Internet service providers and users to defamation liability would tend to chill online speech,” the unanimous ruling said. The decision was a victory for Internet free speech advocates, who warned that a contrary outcome could have affected users of newsgroups, blogs, listservs, and bulletin boards who enter those forums to discuss the views of others. A loss could even have jeopardized Web sites run by students to evaluate their professors, said the ACLU and the Electronic Frontier Foundation in friend of court briefs.

The case involved a lawsuit against Ilena Rosenthal, a women’s health activist, who created an e-mail list and a newsgroup to discuss issues related to breast implants. Six years ago, she posted a letter written by a man who was highly critical of the efforts of a doctor to discredit advocates of alternative health treatments.

In the letter, the doctor, Terry Polevoy, was accused of trying to get an alternative medicine radio program canceled by using “scare tactics, stalking, and intimidation techniques” against the program’s producer. Polevy, who maintained a Web site himself to expose what he called “health fraud and quackery,” sued Rosenthal for libel.

She argued that because she did not write the letter herself and instead posted the work of another to her newsgroup, she was immune from suit under a section of the federal Communications Decency Act, passed by Congress in 1966. It protects both Internet service providers and their users from lawsuits.

In its ruling, the California Supreme Court said granting such broad immunity for posting defamatory statements “has some troubling consequences.” Nevertheless, the court said, “Until Congress chooses to revise the settled law in this area” people who contend they were defamed on the Internet can seek recovery only from the original source of the statement, not from those who repost it.” Reported in: MSNBC.com, November 20.

video games

Springfield, Illinois

On November 27, the U.S. Court of Appeals for the Seventh Circuit struck down an Illinois law that would have banned the sale or rental to minors of video games that contain sexually oriented depictions even if those depictions were found to have serious value for minors. The ruling in *Entertainment Software Association v. Blagojevich* upheld a U.S. District Court decision enjoining enforcement of the law.

“While it is constitutionally permissible for the legislature to restrict the dissemination of sexually oriented

material to minors, it must do so in a manner consistent with the three-part test established by the U.S. Supreme Court,” noted Michael Bamberger, general counsel for The Media Coalition and the author of its *amicus* brief in the case. “Illinois legislators and Governor Blagojevich were informed that this law did not meet the test, and thus was constitutionally defective, but they recklessly chose to pass it anyway and invited a legal challenge.”

The case involved an appeal by the state of Illinois of a ruling that a portion of Illinois Public Law 94-315 was unconstitutional. The portions at issue would have barred the sale or rental to minors of video games defined by a standard based in part on the state’s “obscene for minors” law. The challenged portions of the law also would have required retailers to label the front covers of every restricted game with two-inch by two-inch squares reading “18” and directed every Illinois video game retailer to post in its store signs informing customers that the video game industry’s rating system is available to aid in the selection of a game.

In December of last year, a federal district court in Chicago found all the provisions unconstitutional. (The district court also found a restriction on violent video games unconstitutional, but the state did not appeal that ruling.)

In addition to overturning the restriction on sexually oriented content, the district court found that the law’s labeling and signage requirements constituted compelled speech and that incorporation of the video game industry’s private ratings system in the regulatory system was unconstitutional.

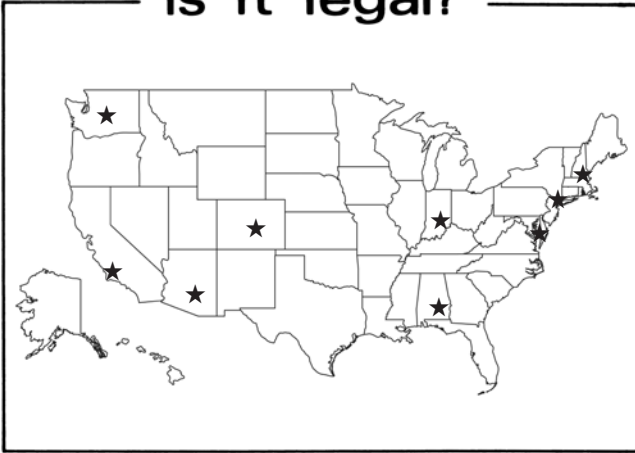
“We are pleased that the Seventh Circuit has upheld the lower court ruling invalidating this law,” said David Horowitz, executive director of The Media Coalition. “In doing so, the court reaffirmed that video games are afforded the same First Amendment protections as other media and that retailers cannot be forced to tell their customers otherwise.” Reported in: The Media Coalition Press Release, November 27.

Baton Rouge, Louisiana

U.S. District Court Judge James Brady, on November 29 ordered a permanent injunction halting the implementation of a Louisiana statute that sought to ban the sale of violent video games to minors. Federal courts in nine cases in the past six years have now struck down or enjoined laws seeking to ban video game sales to minors. None have been upheld.

What made Judge Brady’s action unusual and remarkable is that he issued his ruling from the bench rather than through a written decision, a strong signal that he felt the State’s arguments were so without merit that they didn’t even require a detailed opinion beyond the Judge’s August decision imposing the preliminary injunction. In his August ruling, the Judge emphasized the State’s failure to take into consideration when passing this law the long line of previous cases holding that video games are protected speech. Reported in: Business Wire, November 30. □

is it legal?



libraries

Oro Valley, Arizona

The Oro Valley Town Council was scheduled November 15 to consider a policy that, if approved, would require the Oro Valley Public Library to filter all Internet access for pornography—a practice that some say limits the public's right to information. Vice Mayor Terry Parish, who asked the Town Council to consider the proposed policy, said filtering Internet access for pornography protects minors.

Under the policy that has been in effect, Oro Valley Public Library gives adults age 18 and older the choice of filtered or unfiltered Internet access on its general use computers. "I was surprised at how lax our policy is," Parish said. "We could do a better job protecting our youth," he said.

In 2005, Oro Valley library patrons reported to the staff three incidents of children noticing adults looking at pornographic Web sites, Hartz-Musgrave said. "In some instances, staff has asked individuals to leave the library because of their conduct on the computer," she wrote.

But that happened before the Tucson Pima-Public Library system installed privacy screens on the computers, according to Hartz-Musgrave.

Another concern fueling the filtering issue is that a minor could borrow an adult's library card and use it to obtain unfiltered access to the Internet on the library's general use computers, she said.

Library computers have software that determines a computer user's level of access to the Internet by the age of the person who owns the library card used to reserve the computer. Based on these and other concerns, "there's a lot of risk in letting pornography on your general use computers," Parish said. Reported in: *Arizona Star*, November 16.

Los Angeles, California

A University of California at Los Angeles student was repeatedly stunned with an electronic Taser by campus police officers November 14 at the UCLA Powell Library. The incident, which was partly captured on video by another student and posted on YouTube, has much of the community wondering if the officers used excessive force.

Mostafa Tabatabaiejad, twenty-three, was in a library computer lab around 11:30 P.M. when a community service officer asked for his campus ID as part of the library's policy of requesting identification from patrons after 11:00 P.M. Tabatabaiejad refused, and the officer soon returned with members of the University of California Police Department. "He continued to refuse," read a November 15 UCPD memo. "As the officers attempted to escort him out, he went limp and continued to refuse to cooperate with officers or leave the building." The statement claims that "Tabatabaiejad encouraged library patrons to join his resistance" and confirms that he was stunned with a Taser and arrested for resisting a police officer.

But witnesses told the November 16 *Los Angeles Times* that Tabatabaiejad was on his way out of the library when police forcibly stopped him. In the roughly six-minute video, Tabatabaiejad's screams of pain are clearly audible, as is his shout, "Here's your PATRIOT Act, here's your fucking abuse of power." The video also captures patrons asking for the officers' badge numbers, as well as a patron being told to move away from an officer "or you're going to get Tasered, too."

According to the November 17 *Times*, attorney Stephen Yagman plans to file a civil rights lawsuit on Tabatabaiejad's behalf, charging the UCLA police with "brutal excessive force" and false arrest. Yagman said that his client, who is a U.S.-born citizen of Iranian descent, felt he was a victim of racial profiling and therefore went limp after being taken hold of as he was leaving the library, so as to "get the beating, the use of brutal force, to stop by shouting and causing people to watch. Generally, police don't want to do their dirties in front of a lot of witnesses."

A November 15 statement from Interim Chancellor Norman Abrams confirmed the UCPD's assurance that the matter is under investigation.

The incident came one day after Paul Allaire, forty-two, was forcibly taken from the University of Missouri at Columbia's Elmer Ellis Library. Allaire reportedly kicked one of the eight police officers summoned to the scene by library security. He was restrained, arrested, and charged

with resisting arrest, threatening to assault a library security guard, and assaulting a university police officer.

“[The library] had some past problems with him,” Doug Schwandt of the campus police told the *Columbia* (Mo.) *Daily Tribune*. “He had stayed in the library one night last week when it closed.” Reported in: *American Libraries* online, November 17.

Wenatchee, Washington

Three individuals and the Second Amendment Foundation, a pro-firearm nonprofit group, have engaged the American Civil Liberties Union to represent them in a lawsuit against the Internet filtering policy of the North Central Regional Library, headquartered in Wenatchee.

The challenge centers on NCRL’s use of Secure Computing’s Bess censorship on all its public computers, which the plaintiffs allege has blocked them from viewing constitutionally protected Web sites. The lawsuit, filed November 16 in U.S. District Court in Spokane, also contends that the library staff refused to disable the filters upon request.

“Libraries should not deny adults using publicly available computers the opportunity to view research material and other lawful information,” ACLU Legal Director Sarah Dunne said in a release.

“We want to err on the side of kids,” NCRL Director Dean Marney said, adding, “The Internet is so huge, and we carefully choose the books for our libraries. Shouldn’t we try to be as careful with the Internet?” Marney said federal law did not require the library to grant patron requests to provide unblocked access.

The three individual plaintiffs claim they were prevented from viewing Web sites on drug and alcohol abuse for a university course, accessing a personal blog on MySpace, and conducting research on art galleries and health issues. The Second Amendment Foundation, located in Bellevue, Washington, contends that NCRL blocks access to its magazine *Women and Guns*, which covers such topics as self-defense, recreational shooting, and weapons-related legal issues.

The lawsuit asks the court to require the library to disable the filters when requested by an adult for research or other lawful purposes. The NCRL system has twenty-eight branches in five central Washington counties. Reported in: *American Libraries* Online, November 17.

schools

Knightstown, Indiana

Two students are suing to return to school after they were expelled for making a movie in which evil teddy bears attack a teacher. The teenagers were among four students expelled from Knightstown High School over the movie,

titled “The Teddy Bear Master.” Two of the boys are asking a federal judge in Indianapolis to order the students reinstated, arguing that school officials overreacted to a film parody and violated their First Amendment rights.

But Knightstown Principal Jim Diagostino and Superintendent David McGuire don’t see the humor, and note that the teacher who is threatened in the movie has the same last name as a real teacher in the district.

“That’s crazy to think that’s a threat to anyone,” said Linda Imel, whose fifteen-year-old son Isaac, and his friend Cody Overbay, sixteen, have filed the lawsuit in U.S. District Court. “We have adults, supposedly—and educators at that—who have failed terribly. They’re willing to throw four good kids away,” said Imel, whose son has missed more than a month of school.

But the Charles A. Beard Memorial School Board upheld the suspensions of Imel, Overbay and a third student who had appealed to return to school. The other boy who was expelled has not taken legal action.

Indiana law allows expulsion for activity unconnected with school if the activity is unlawful and interferes with school operations. The Henry County prosecutor’s office reviewed the movie but declined to press charges.

The boys, who are sophomores, worked on the teddy bear movie from fall 2005 through summer 2006. In the movie, the “teddy bear master” orders stuffed animals to kill a teacher who had embarrassed him, but students battle the toy beasts, according to documents filed in court.

“It’s a fourteen- or fifteen-year-old boy’s idea of humor,” said Jackie Suess, an attorney for the ACLU of Indiana, which is representing one of the students.

In a letter to school board members, the district superintendent said teacher Daniel Clevenger, who teaches seventh grade at Knightstown Intermediate School, felt threatened by the movie. Indianapolis attorney Robert Kelso, who represents the school district, wrote in a document filed in court that the movie “contained vulgar and offensive language, threatened and intimidated a teacher.” Reported in: *Indianapolis Star*, November 26.

protest

Beaver Creek, Colorado

A man is suing a Secret Service agent who arrested him after he made a caustic comment to Vice President Dick Cheney on a sidewalk in Beaver Creek last June. Steven Howards, a consultant to nonprofit organizations, was vacationing with his family in Beaver Creek when he spotted Cheney in an outdoor mall shaking hands and posing for photos. Howards and his son walked over and told Cheney that his policies in Iraq are “reprehensible.”

Howards said he may have touched Cheney on the elbow or shoulder, like others in the crowd. Howards kept

walking to his son's piano lesson. He returned to the spot about ten minutes later with another son, and that's when Secret Service agent Virgil Reichle handcuffed and arrested Howards for assaulting the vice president.

The charge was later reduced to harassment, then dismissed in Eagle County Court a month later.

Howards is suing for unlawful seizure, unlawful search and retaliation for exercising his constitutional right to free speech. The lawsuit was filed October 3 in federal court in Denver.

Lon Garner, special agent in charge of the Secret Service in Denver, declined to comment and said Reichle would not be made available for an interview. A spokeswoman for the Secret Service in Washington did not immediately return a call. A White House spokesman referred questions to the Secret Service.

In the lawsuit, Howards claims Reichle violated his First Amendment right to free speech and his Fourth Amendment protection from unreasonable search and seizure. "It's such a blatant attempt to suppress a right to free speech. Such a traumatic event for my son, I couldn't just let it pass," Howards said before the suit was filed.

Howards accused Reichle of "badgering" him about whether he assaulted or touched Cheney. Howards said he told Reichle, "If Mr. Cheney wants to be shielded from criticism he should avoid public places. I closed by telling him, 'If exercising my constitutionally protected rights to free speech is against the law, you should arrest me.'" Howards said he was assertive with Reichle but not argumentative. Reported in: *Denver Post*, October 3.

Washington, D.C.

Internal military documents released October 12 provided new details about the Defense Department's collection of information on demonstrations nationwide last year by students, Quakers and others opposed to the Iraq war. The documents, obtained by the American Civil Liberties Union under a Freedom of Information Act lawsuit, show, for instance, that military officials labeled as "potential terrorist activity" events like a "Stop the War Now" rally in Akron, Ohio, in March 2005.

The Defense Department acknowledged last year that its analysts had maintained records on war protests in an internal database past the ninety days its guidelines allowed, and even after it was determined there was no threat. A department spokesman said the "questionable data collection" had led to a tightening of military procedures to ensure that only information relevant to terrorism and other threats was collected. The spokesman, Major Patrick Ryder, said in response to the release of the documents that the department "views with great concern any potential violation" of the policy.

"There is nothing more important or integral to the effectiveness of the U.S. military than the trust and good will of the American people," Major Ryder said.

A document first disclosed last December by NBC News showed that the military had maintained a database, known as Talon, containing information about more than fifteen hundred "suspicious incidents" around the country in 2004 and 2005. Dozens of alerts on antiwar meetings and peaceful protests appear to have remained in the database even after analysts had decided that they posed no threat to military bases or personnel.

Some documents obtained by the ACLU referred to the potential for disruption to military recruiting and the threat posed to military personnel as a result. An internal report produced in May 2005, for instance, discussed antiwar protests at the University of California, Santa Cruz, and was issued "to clarify why the Students for Peace and Justice represent a potential threat to DOD personnel."

The memorandum noted that several hundred students had recently protested the presence of military recruiters at a career fair and demanded that they leave.

"The clear purpose of these civil disobedience actions was to disrupt the recruiting mission of the U.S. Army Recruiting Command by blocking the entrance to the recruiting station and causing the stations to shut down early," it said.

But the document also noted that "to date, no reported incidents have occurred at these protests."

The documents indicated that intelligence reports and tips about antiwar protests, including mundane details like the schedule for weekly planning meetings, were widely shared among analysts from the military, the Federal Bureau of Investigation and the Department of Homeland Security.

"There is simply no reason why the United States military should be monitoring the peaceful activities of American citizens who oppose U.S. war policies," said Ben Wizner, a lawyer for the ACLU.

Joyce Miller, an official with the American Friends Service Committee, a Quaker group that learned that information on some of its antiwar protests was in the military database, said she found the operation to be a "chilling" and troubling trend. Reported in: *New York Times*, October 13.

terrorism

Guantanamo Bay, Cuba

Attorneys for captives in the Guantanamo Bay military prison asked a federal appeals court November 1 to reject a provision of the new military commission law that strips hundreds of detainees of their right to challenge their detention in U.S. courts. The lawyers, joined by a group of retired judges from both political parties, argued that the United States cannot indefinitely imprison foreign nationals in a military prison without charging them with crimes and deny them the chance to test the evidence against them in the U.S. justice system.

President Bush sought Congress's approval this fall for the Military Commissions Act, which also set new rules for military trials of the detainees, and signed it into law October 17. Government lawyers quickly moved to throw out hundreds of pending challenges by the detainees, known as habeas corpus cases. The issue is pending before the U.S. Court of Appeals for the District of Columbia Circuit.

But attorneys for detainees argue that the law does not apply to detainees with ongoing cases, in part because the government can take that drastic step only when the country is in the middle of an active war.

"We do not believe Congress wiped out our cases in this act, and we feel strongly if Congress had done that, it would be unconstitutional," said David H. Remes, one of the lawyers. "The only time Congress can suspend the writ of habeas is in cases of invasion and rebellion. We are not being invaded, and there is no rebellion."

The administration pressed for passage of the new law after the Supreme Court ruled this summer in *Hamdan v. Rumsfeld* that pending habeas cases could continue, despite administration arguments that a previous law had ended those rights.

An estimated 435 detainees remain at the military prison at Guantanamo Bay. The government has determined that about one hundred could be released or transferred. Another group may be charged with crimes and tried before military commissions. The habeas dispute involves the majority, who never will be charged but have been deemed "enemy combatants" by a three-member military panel.

A group of seven federal judges, who filed a separate *amicus* brief, argued that the new law is fatally flawed for another reason. Under a separate provision, they noted, the military can imprison someone without any charges based on evidence produced through statements of the detainee or of someone else made during torture.

The government "created a tribunal that was permitted to accept evidence secured by torture and presume that evidence was genuine and accurate," the judges wrote. If U.S. courts have no role in testing the basis for holding detainees, they said, the U.S. government "cannot remove the stain of torture" from the military's decisions.

The detainee attorneys also argued that the law uses imprecise language in describing the effective date for the act to apply to specific categories of cases. Reported in: *Washington Post*, November 2.

PATRIOT Act

Washington, D.C.

After more than two years in a legal battle with the American Civil Liberties Union, the FBI has abandoned a PATRIOT Act demand for the subscriber records of a small

Internet Service Provider. The ACLU welcomed the decision but criticized the FBI for refusing to lift a gag order that prevents the provider from disclosing its identity.

"We're pleased with the FBI's decision to abandon its demand for sensitive information about our client's subscribers, though of course we would have liked the FBI to abandon this dubious demand many months ago," said Jameel Jaffer, lead attorney in the case and deputy director of the ACLU's National Security Program. "We will continue to challenge the gag provision that silences our client and allows the FBI the unreviewable authority to silence anyone else served with a 'National Security Letter.'"

The FBI announced that it is dropping its National Security Letter in legal papers made public November 22. The Internet Service Provider is still gagged and is identified as "John Doe" in the court documents.

The action is the second time the FBI has withdrawn a National Security Letter after being forced to defend its demand in court. In another high profile case, the FBI dropped its demand in June for the patron records of a Connecticut library consortium. In that case, however, the FBI also dropped the gag that would have prevented the librarians from speaking publicly about the demand. The ACLU questioned why the FBI is insisting on maintaining the gag in the New York case.

"The FBI came under a great deal of public scrutiny once the Connecticut librarians were able to speak publicly, and it appears the government wants to avoid a similar situation," said Ann Beeson, Associate Legal Director of the ACLU. "We have learned from experience that the government routinely abuses its power to invoke secrecy to silence opposition, rather than protect national security."

The National Security Letter provision of the PATRIOT Act allows the government to demand, without court approval, records of people who are not suspected of any wrongdoing. Anyone who receives such a demand is prohibited from disclosing even the mere existence of the request. According to news reports, the government issues thirty thousand National Security Letters every year.

The ACLU said the gag provision has had significant effects on the John Doe Internet Service Provider. Because of the gag, for example, John Doe was prevented from participating in the contentious PATRIOT Act reauthorization debate that raged across the nation in late 2005 and early 2006. Even though Doe had firsthand knowledge of this sweeping FBI power, Doe could not disclose the fact that the FBI had served it with a National Security Letter, divulge the breadth of the letter, or discuss the ramifications on its business relationships.

The ACLU filed the case on behalf of the Internet Service Provider in April 2004. In September 2004, the district court struck down the PATRIOT Act provision as unconstitutional, with Judge Victor Marrero writing that "democracy abhors undue secrecy." In his landmark rul-

ing, Judge Marrero held that indefinite gag orders imposed under the National Security Letter law violate free speech rights protected by the First Amendment.

The government appealed the decision to the U.S. Court of Appeals for the Second Circuit, but before the court issued a decision, Congress amended the PATRIOT Act provision. In May 2006, the appeals court issued a ruling asking the district court to consider the constitutionality of the amended law. In a concurring opinion, Judge Richard Cardamone strongly criticized the government for continuing to argue that a permanent ban on speech would be permissible under the First Amendment.

“A ban on speech and a shroud of secrecy in perpetuity are antithetical to democratic concepts and do not fit comfortably with the fundamental rights guaranteed American citizens,” wrote Judge Cardamone. “Unending secrecy of actions taken by government officials may also serve as a cover for possible official misconduct and/or incompetence.” Reported in: ACLU Press Release, November 22.

colleges and universities

Boston, Massachusetts

“Balance” is a much debated topic in higher education—and if Boston College is any indication, trying to regulate balance in campus presentations can create all kinds of difficulties.

The college has adopted new rules for the speakers students may invite to campus using student activity fees. Under the new policies—which were not discussed with student or faculty leaders prior to adoption—the college reserves the right to make “necessary adjustments to require that balanced views be presented,” in light of the college’s identity as a Roman Catholic, Jesuit institution. The college also reserves the right to postpone programs to be sure that they can get such balance, and to call them off in the “rare instances” in which it is impossible to achieve balance.

While the policy makes broad reference to the college’s religious mission, Jack Dunn, a spokesman, acknowledged that it was only certain topics that were likely to set off reviews and demands for balance. “Abortion is the hot button issue,” he said, adding that other topics related to sexuality would also be subject to scrutiny. Dunn stressed that faculty members could bring whomever they wanted to campus, and that the college expected only very rarely to have to block events. “The intention here is not to censor.”

That’s very unclear to many on the campus, especially because of how the policy is being described. Student leaders noted, for example, that a Republican politician who favored the death penalty, tight controls on immigration, and cuts to programs for the poor—all stances opposed by

Catholic leaders—would apparently be welcome to speak without “balance” being required. Indeed the college’s last graduation speaker was Condoleezza Rice, the U.S. secretary of state, who has been a key player in Bush administration foreign policy, seen by many Catholics as antithetical to church teachings.

In contrast, Patrick Healey, president of the College Democrats at Boston College, said he fears any time he invites a politician who favors stem cell research or abortion rights, a Republican opposed to those positions would have to join the panel.

“It’s a real slap in the face” that some views would have to be balanced and others wouldn’t,” he said.

Healey has been in Catholic schools since first grade and he said there is no lack of clarity for him or others about Catholic teachings on abortion or various other matters. “I have a very firm understanding of what the church believes,” he said. “We’re not trying to convince students to ignore Catholic teachings. We want to bring in speakers so students can make up their minds.”

An editorial in *The Heights*, the student paper, also denounced the new rules. “The Heights isn’t pro-life, or pro-choice; creationist or evolutionary; conservative or liberal; Catholic or Protestant or Muslim or Jewish. *The Heights* is pro-knowledge, anti-complacency, and pro-discussion,” the editorial said. “At a university like Boston College, Catholic teaching should be explained, celebrated, encouraged, and expressed in its fullness. Catholic teaching on abortion rights, the sanctity of marriage, and the morality of war should be professed—just as the Catholic practice of ‘disputation,’ or academic debate, and its historic role in the discussion and clarification of Catholic doctrine should also be encouraged on our campus. This requires that pro-abortion rights views, supporters of gay marriage, and the necessity of just war be professed with equal fervor.”

While the policy is focused on students, professors are upset as well. Charles Derber, a professor of sociology who has taught at Boston College for twenty-six years, said the policy was more dangerous in part because it is unclear when and why it will be applied. “We’re talking about scrutinizing people’s views before they are even on campus,” he said. He noted that there are dozens of speakers on campus everyday, invited by a range of groups. “Is there going to be a committee that is going to review each of these people? What is going to constitute balance?”

While Dunn said it was “important” to note that faculty members were not covered by the policy, Derber said that it in no way limited the importance of the policy to everyone at the college.

“The integrity of the university depends on free and open debate,” he said, so any change in that tradition should be reviewed by faculty and student leaders. “This is central to what a university is about.” Reported in: insidehighered.com, October 18.

New York, New York

Hiring and tenure decisions are typically decided (and appropriately decided, most in academe would say) by academics. A series of lobbying campaigns by pro-Israel groups, however, have some scholars worried that those who criticize Israel are being subjected to political tests and having their jobs endangered.

At Barnard College, Nadia Abu El-Haj, an anthropologist who is coming up for tenure, is under attack by some alumnae and pro-Israel groups for a book, published by the University of Chicago Press, that was critical of Israeli archaeology and its use in the context of the Israeli-Palestinian conflict.

At Wayne State University, similar groups are pushing the university not to hire Wadie Said for a faculty position in the law school. In that case, critics of Said are attacking him and his late father, the literary theorist Edward Said, saying that both Saids's activism on behalf of the Palestinian cause has amounted to support for violent groups.

These debates follow the cancellation last month of a lecture by Tony Judt, a professor at New York University, at the Polish consulate in New York City, amid charges that the Anti-Defamation League had encouraged Polish officials to call off the talk (see page 31). And in June, Yale University turned down Juan Cole, a University of Michigan professor who is a leading figure in Middle Eastern studies, for a position—after a lengthy period in which critics of Cole argued that he was not a suitable choice for the position, in part because of his criticism of Israel. And Princeton University has faced criticism over a possible hire as well.

The Middle East Studies Association, of which Cole is the president, voted to expand the work of its academic freedom committee—which has focused on helping scholars in the Middle East—to engage in efforts on behalf of colleagues in the United States.

“The subtext of these controversies is whether it is going to be allowed for Palestinians to hold positions in academe in the United States. Is it going to be allowed for people who are not Zionists to hold positions? Is there a Zionist litmus test in the United States?” said Cole. He characterized the pro-Israel groups' activities as “the privatization of McCarthyism” and said they represented the most serious threat today to academic freedom in the United States.

Winfield Myers, director of Campus Watch, a pro-Israel group that publicizes information about professors who are critical of Israel, said Cole and others in Middle Eastern studies are distorting what is going on and that his group respects the right of faculty members to decide academic appointments. Myers said, however, that non-academics have every right to make their views known and that Middle Eastern studies professors are trying to prevent that from happening. “It is ultimately for faculty to decide. We're not saying ‘approve this guy and turn this other fellow down,’” Myers said. But he said academics do not have

the right to make these decisions in a “cocoon of silence” in which information about scholars' “politicized work” isn't well known.

In the case of El-Haj, much of the criticism concerns her book *Facts on the Ground: Archaeological Practice and Territorial Self-Fashioning in Israeli Society*. Material published on Campus Watch states that the book's aim is to undermine the historic connection between the Jewish people and Israel, that the critique of Israeli archaeology is poorly researched and written, and that the author's anti-Israel bias undercuts her work. The material also questions whether El-Haj knows enough about Israel and has enough mastery of Hebrew to conduct any anthropological work about Israeli society. The material includes Barnard President Judith Shapiro's e-mail address and phone number.

Wayne State President Irvin Reid has had his contact info—as well as that of Frank H. Wu, the law dean—widely distributed by those seeking to prevent Said's appointment. The Web site of the pro-Israel group Stand With Us states that Said “shares his father's views” and is “supportive of his father's legacy of ‘post-colonial,’ ‘Orientalist’ slander against Israel.” Said is also criticized for his participation in the defense team of Sami Al-Arian, the former University of South Florida professor who reached a plea agreement with the government on various charges against him after a jury rejected some charges and was divided on others.

David Horowitz's magazine is also coming out against Said. (Defenders of El-Haj and Said make much of the tone of the Web sites attacking them, but some of the Web sites defending them aren't exactly subtle in their tones either. One site defending Said says “the Negro President of WSU Irvin Reid is a staunch supporter of the racist state of Israel” and that because of his “unconditional support for the settler-colonial state of Zionist Israel,” he has no business running a university in Detroit, home to a large Arab-American population.)

It is unclear what impact the campaigns will have. The academic job market is tough enough that when someone doesn't get a position, there are any number of reasons that could explain that decision. Winning tenure at Barnard or a faculty position at Yale aren't easy things to do regardless of whether one is being criticized on pro-Israel Web sites. At the same time, some of those who have lost their shot at jobs—like Cole at Yale—had strong faculty backing and appeared well positioned to gain certain positions prior to the lobbying campaigns.

Wu, the law dean at Wayne State, said lobbying administrators there will have no impact. He said the tradition at the law school—which he supports—is that job offers come only after two-thirds of the faculty agree. Wu said he has never tried to influence the faculty vote, and would never do so—or attempt to block a candidate who gained that level of support. Wu said he felt so strongly about this principle that he does not even vote as a faculty member. “We have a celebrated tradition of shared

governance and academic freedom,” he said. Sending him an e-mail about Said’s candidacy would have about as much impact, he said, as sending an e-mail about Said to the dean of Harvard Law School, where Said is not a candidate for anything.

If the pro-Israel groups start lobbying professors, Wu warned that the effort might backfire. He said his faculty holds a range of views politically and that professors likely don’t all agree on whether it’s appropriate for members of the public to seek to influence their hiring decisions. “Some might welcome [the e-mails]. Some might be offended. Some might be so turned off by the e-mail coming in that they may be persuaded to take a position that they might not have otherwise,” Wu said

Roger Bowen, general secretary of the American Association of University Professors, said flatly that outside groups do not have a role in these hiring and tenure decisions. “Non-academics and external advocacy groups should not be permitted to intrude in hiring and tenure cases in the academy, he said. “Academic freedom also requires recognition that scholars alone have the right to pass judgment on the quality of a professor’s credentials. No scholar should have to be subjected to political litmus tests conjured up by partisan groups.”

A Barnard spokeswoman said the college has received around twenty-five letters and e-mail messages from alumnae about El-Haj. The spokeswoman said the college would never comment on the status of a tenure review. Judith Shapiro, Barnard’s president, has posted on the alumnae Web site a letter about the dispute. In her letter, Shapiro noted that a review of El-Haj’s work would include outside evaluations by experts in the field. Shapiro—a cultural anthropologist herself—did not offer an opinion on El-Haj’s work. But she defended the type of work done, saying that “it is a legitimate cultural anthropological enterprise to show how archaeological research can be used for political and ideological purposes,” and noted that such critiques are not unique to the Middle East.

While Shapiro said she welcomed feedback from alumnae, she also said she wanted to share “my concern about communications and letter-writing campaigns orchestrated by people who are not as familiar with Barnard as you are, and who may not be in the best position to judge the matter at hand.”

Cole said in both the Barnard and Wayne State disputes, good scholars are having their careers unfairly maligned. (In both cases, he said he knows their work, but isn’t a personal friend.) El-Haj is “very well respected” and the issues she raises in her work are important ones, Cole said. A long-standing concern of Palestinians, he said, is that Israeli archaeologists dig through materials that cover centuries of key developments in the region to focus on the period of ancient Israel. “Getting rid of this professor would be like replicating what she is writing about in terms of what was done on the ground,” he said.

And while Cole is no critic of Edward Said, he also said it was unfair and inappropriate for people who didn’t like his ideas to take that out on his son. “This shows that it’s a blood feud,” he said.

Ari Drissman, president of the Wayne State chapter of Students for Israel, said there were legitimate reasons to oppose Said’s appointment. Drissman said the environment at the university is “very tense” for students who support Israel, who are barraged with anti-Israel leaflets that are “without any facts.” He characterized the publicity being given to Said’s background as similar to a background check done by a business before hiring a new employee.

Myers of Campus Watch used similar language. He stressed that all the groups are doing is publicizing information, not trying to intrude on actual decisions. As for his opinion, he said El-Haj’s work is “part of an ongoing effort to delegitimize the modern Israeli state,” and that Said has “some rather radical politics.”

In getting out the word about these people, Myers said, his group “is not part of some effort to silence the Arab voice.” Rather, he said, his group is trying to open up debate. If Middle Eastern studies scholars are offended by the work of Campus Watch, Myers said, “they aren’t used to getting criticism,” adding that information put out by all groups—his own included—should be open for critique. Reported in: insidehighered.com, November 21.

broadcasting

Washington, D.C.

The FCC has upheld profanity findings against Fox for two Billboard Music Award broadcasts, while dismissing ones against CBS’ *The Early Show* on the grounds its fleeting expletive was not profane or indecent, and against ABC’s *NYPD Blue* on procedural grounds.

After considering comments from broadcasters and others, the FCC concluded November 6 that “comments made by Nicole Richie during the 2003 Billboard Music Awards and by Cher during the 2002 Billboard Music Awards are indecent and profane as broadcast but that the complained-of material aired on *The Early Show* is neither indecent nor profane. In addition, we dismiss on procedural grounds the complaints involving *NYPD Blue* as inadequate to trigger enforcement.”

But the FCC also reasserted its presumption that the words “fuck” and “shit” are profane and indecent unless context mitigates. It also defended its ability generally to regulate indecent broadcast content, saying the availability of blocking mechanisms or the presence of alternate media without similar restrictions—cable, the Internet—did not persuade it that its current enforcement regime was unconstitutionally vague or de facto ineffective in protecting children from indecent content.

Commissioner Jonathan Adelstein dissented in part from the decisions.

The commission said, again, that it would not levy any fines against the two Billboard broadcasts on Fox or hold the profanity findings against the stations cited.

The Commission said it dismissed *The Early Show* complaint because it was “deferring to CBS’ plausible characterization” of the show as a news interview program and thus the use of the word “bullshitter” by a contestant on *Survivor: Vanatu* was neither profane or indecent.

Adelstein took issue with what he called an “infotainment” exemption—in a segment essentially promoting an entertainment show on CBS—that did not make the FCC’s indecency enforcement standards any clearer.

The *NYPD Blue* finding was dismissed because the complaints did not come from any viewer in the Central Time Zone market where the complaint was lodged and where the show aired at 9 P.M., but instead from a viewer in the Eastern Time Zone where it aired in the indecency safe harbor period of 10–11 P.M.

Again, Adelstein took issue, saying that if the FCC found a broadcast indecent, it was “misguided” to refrain from taking action because a complaint hadn’t come from the same market. “I do not understand how we can say we are faithfully enforcing the law when we are aware of violations of the law we simply choose to ignore,” he said.

“Today’s decision highlights our concern about the government’s inability to issue consistent, reasoned decisions in highly sensitive First Amendment cases,” said Fox spokesman Scott Grogan. “We look forward to Court review, and the clarity we hope it will bring to this area of the law.”

CBS said it was happy with the decision dismissing the complaint against its show, but qualified that: “We are pleased that the FCC has dropped its misguided indecency case against one of our news programs,” the network said in a statement. “Our pleasure is fleeting, however, in that a number of indecency cases and inquiries are still pending, either in the courts or at the FCC.”

CBS stations still face a multimillion-dollar fine over a broadcast of *Without a Trace*, and the \$550,000 Janet Jackson fine it is fighting in court.

“The cloud hanging over broadcasters will remain until the FCC returns to its previous time-honored practice of more measured indecency enforcement. CBS will continue to pursue all of our legal remedies to that end,” said CBS.

“I am pleased the Commission acted with appropriate deliberation in responding to the Court’s limited remand,” said FCC Chair Kevin Martin of the decisions. “The Commission has always held that the use of certain words could be indecent. Consistent with that precedent, this order affirms that the use of the F and S words in the 2002 and the 2003 Billboard Music awards was indeed indecent.

“Hollywood continues to argue they should be able to say the F-word on television whenever they want. Today, the Commission again disagrees.”

That statement came despite the commission’s concession that broadcasters generally don’t air such language, even using broadcasters own reluctance to air swearing as a justification for its own approach. The FCC pointed out that most broadcasters don’t regularly air profanities, even after 10 P.M., when they could do so with relative impunity at least from regulators. It used that to justify its own conclusions that “shit” and “fuck” violated community standards.

Of the news exemption for CBS, Martin said: “It is oftentimes difficult to distinguish between true news programming and infotainment. I found the interview with a contestant on *Survivor: Vanuatu* to be extremely close to that line [a nod to the Adelstein position], I believe the Commission’s exercise of caution with respect to news programming was appropriate in this instance.”

“Finally, the Commission dismissed complaints about episodes of *NYPD Blue*, solely on procedural grounds and they were not decided on the merit.”

TV Watch, the broadcaster-backed online effort to promote parental control rather than government content regulation, saw the decision as emblematic of the FCC’s troubles with defining indecency. “Last night’s decision reinforces the lack of consensus, transparency and clarity that have plagued government efforts to play parent,” said TV Watch Executive Director Jim Dyke. “While the government pondered the accuracy of its own decision against four shows, Americas parents have reviewed, blocked and watched thousands of programs the government may or may not approve of.

“Government officials should spend more time helping parents understand the information available to make smart decisions and the technology available to enforce those decisions, rather than trying to make the decisions for all of us,” Dyke said.

The U.S. Court of Appeals for the Second Circuit in New York in early September granted the FCC’s request to delay a broadcaster challenge to those four rulings for sixty days while it reconsidered them. The court meanwhile stayed enforcement of the FCC’s Golden Globes decision finding “fuck” and by extension “shit,” and their variations, indecent, at least as applied to the four cases at issue. The FCC warned that broadcasters did not have a free pass to swear in prime time during the review period.

The four decisions, part of an omnibus March 15 indecency order, dealt with the 2004 airing of “bullshitter” on CBS’ *The Early Show*, Fox’s 2002 and 2003 broadcasts of *The Billboard Music Awards* (the words “fuck” and “shit”) and a “bullshit” in a 2003 episode of ABC’s *NYPD Blue* (“dick” and “dickhead” in the same episode were OK with the FCC).

NBC did not have a program involved, but intervened nonetheless given the still-unresolved Bono f-word decision that signaled the beginning of the tougher profanity policy.

(continued on page 36)

success stories



libraries

Cape May, New Jersey

The board of the Cape May County Library voted unanimously November 15 to accept the recommendation of Director Andrew Martin to retain three books about adolescent issues that had been challenged by a patron. *Real Girl/Real World: Tools for Finding Your True Self*, by Heather M. Gray and Samantha Phillips, explores issues such as body image, emerging sexuality, and feminism. *The Notebook Girls*, by Julia Baskin, Lindsey Newman, Sophie Pollitt-Cohen, and Courtney Toombs, is comprised of the entries four New York City high school students made in a shared journal in the aftermath of the September 11 terrorist attacks.

The Journey Out: A Guide for and about Lesbian, Gay, and Bisexual Teens, by Rachel Pollack and Cheryl Schwartz, a self-help book for young adults who may be coming to terms with being gay, was the only one of the three challenged titles not to be found on the library shelves, which made a challenge to it moot, Martin advised trustees. He added, "It has gone out once in eleven years."

"Parents don't address these things," library Commissioner Eileen Massey contended before the vote on the titles. "Some of them do," Martin said, but added, "Most of the topics are seen on television." "Or in magazines," added Commissioner Jacqueline Henderson. "We don't ban books," said Commission Chair Mary Dempsey.

Vice-Chair Lawrence Allen agreed as they all voted to keep the books on library shelves. Commissioner Ed Hutchinson was absent.

Martin said requests to remove materials from the library are rare. This was the third in ten years. When videos were first offered, he said, one patron went on a crusade against them and wanted adult videos taken from the shelves, but those stayed as well.

Martin, who addressed the challenge as one of his last actions before retiring November 30, said so far as he knew, the library has "never removed anything." Reported in: *Cape May County Herald*, November 22.

schools

Greencastle, Pennsylvania

The Greencastle-Antrim School Board has denied a parent's request to ban John Steinbeck's *Of Mice and Men* from tenth-grade English classes. Jeaneen Holman said her daughter, one of two African-Americans in DuAnne Thrush's English class, felt uncomfortable with "racial slurs" and profanity used throughout the novel. Holman made a formal objection on October 13, contending the book contains offensive material.

The book has been used in the high school for more than thirty years, according to Principal Jack Appleby. Those who object to its contents have the option of reading an alternate novel. After a lengthy process of complaints, rebuttals and appeals, the board voted unanimously November 16 to continue using the book in the high school curriculum, despite objections over the years from a few parents.

"I don't agree with banning books ever," said Director Pam Ott. "How can you learn if you don't go back and learn what it was like? You have to teach these kids."

Holman said her daughter approached her and said she felt uncomfortable with the contents of the book. Holman said she read the book and was concerned about the use of racial terms, profanity and a shooting described in the novel. She filed a formal complaint with the high school asking it to ban the book from the curriculum. The English department disagreed with Holman's objection, but Holman appealed the decision to the school board.

"I'm strictly concerned about the situation my daughter was put in and other kids," Holman said. "To me, it's not a book that should be in the classroom."

In response to Holman's objection, the English department said Thrush tried to express the needs and interests of students in her curriculum. However, Holman said at least two students were uncomfortable with the material. She said Thrush's class is not a history class and should not tolerate racial language.

"I don't think it's just African American (children) who feel uncomfortable. A lot of things contradict what I try to instill in my children," Holman said.

Holman said the words used in *Of Mice and Men* are not condoned in her household and should not be put in the hands of students. She said she did research and learned the book, which she believes holds no life lessons, had been banned in several states.

Board members disagreed with the option to start banning books, but did express appreciation for the involvement Holman has in her child's life. "I read the book and guess I have to debate you on the life lesson . . . It seemed to be about the American dream," said Director Dan Fisher. "I read the same words you read and they sting . . . (but) it was written in 1937, and I disagree with the point of pulling it out of the classroom."

Fisher and Director Mike Shindle said it's important to learn from mistakes and move forward, rather than risk repeating them in the future. Director Howard Ritchey agreed but encouraged the English department to search for a different book with the same lessons that is less controversial. Appleby said the department must do a study and report to the board for any change in curriculum, a process that can be lengthy and expensive. Students who chose an alternative book work from a separate syllabus, Appleby said. Teachers may use different lesson plans for one person and must find ways to compare both assignments to keep students up to speed with the class.

Superintendent Duff Rearick said he plans to work with Vice Principal Ed Rife to offer parents more information on the reading material used in class. Reported in: *Waynesboro Record-Herald*, November 18.

Fond du Lac, Wisconsin

Maya Angelou's *I Know Why the Caged Bird Sings* won't be locked out of the English curriculum at Fond du Lac High School. Meanwhile, Bruce Olsen, an assistant attorney with the Wisconsin Attorney General's office, said the Fond du Lac School District violated open meeting laws when it failed to provide a public notice of a committee meeting to consider the parental request to ban the book.

Superintendent of Schools Dr. Gregory Maass announced November 27 that a committee had recommended keeping the book in the high school English department. When it's read next year, parents will receive notification and be allowed to decide whether or not they approve of its use by their children, according to recommendations agreed upon by the committee and parents who objected to the use of the book. Maass said recommendations also call for a more coherent, consistent approach to selecting materials for use in English classes.

Maass said he and the parents who objected to the book—Dave and Lorrie Gneiser—would issue a joint statement on the recommendations.

School officials discussed the book after the Gneisers requested that the novel be removed from a sophomore

advanced English class. A number of other parents agreed that the book should be removed from the curriculum, Maass said. Parents objected to teens reading Angelou's account of being brutally raped by her mother's boyfriend and an unwanted pregnancy later in life.

As to the state attorney general's opinion on open meetings, Maass said Olsen's opinion is only one person's interpretation of the law, and that the issue isn't about protecting those involved or not providing notice of a public meeting, but working with parents.

"At this point my focus, as I look at it, is trying to work with these parents," he said. "I will continue to honor that relationship and I'm not going to compromise my professional and personal values related to these parents."

The committee made a decision November 21, after the district's standing curriculum committee held a meeting to hear from interested parties who had concerns about the book's content, said Committee Chair Theisen Middle School Principal Kim Pahlow. Pahlow said the parents (the Gneisers) did not ask that the book necessarily be banned from the school. Their student was given an alternative reading choice, but the parents decided to take things further by asking that the book be removed.

"Banned is not the right word. They wanted it removed from English classes. The book is still in the high school library and the parents were not requesting the book not be discussed, for example, in a history class," Pahlow said.

Despite the fact that about eighty people attended the November 21 meeting—called a "reconsideration meeting"—school officials said they also did not believe public notice was required.

Olsen, assistant attorney in the state Attorney General's office, said because the committee was formed by either school officials or the Board of Education and appointed to perform a task, it is a governmental body under the open meeting law. "As soon as you put citizens on a committee and tell them to give a recommendation to school officials, it becomes an advisory committee to the school board under the open meeting law and is governed by the open meeting law," he said.

Violations of the open meeting law happen frequently because of ignorance, Olsen said, which means simply not understanding the definition of an open meeting. "The majority of time it is unintentional. A complaint can be made to the district attorney, forfeitures can be levied against the presiding officer, but the DA will often decline to prosecute as long as those involved agree to educate themselves," he said.

The meeting was held in a respectful manner that followed the district's outlined procedures, Pahlow said. A procedural handbook for reconsideration of challenged educational materials developed by a committee several years ago, states "the committee shall be kept informed concerning the status of the complainant through the committee reconsideration process. The complainant and known inter-

ested parties will be given appropriate notice of meetings.”
Reported in: *Fond du Lac Reporter*, November 28.

etc.

Pagosa Springs, Colorado

Fines have been dropped against a couple who were threatened with fines of twenty-five dollars a day by their homeowners’ association unless they removed a four-foot wreath shaped like a peace symbol from the front of their house, and the three-member board of the association has resigned.

Two board members have disconnected their telephones, apparently to escape the waves of callers asking what the board could have been thinking, residents said.

In its original letter to the couple, Lisa Jensen and Bill Trimarco, the association said some neighbors had found the peace symbol politically “divisive.” A board member later told a newspaper that he thought the familiar circle with angled lines was also, perhaps, a sign of the devil.

The peace symbol came to prominence in the late 1950s as the logo for the Campaign for Nuclear Disarmament, a British antiwar group, according to the group’s Web site. It incorporates the semaphore flag images for the letters in the group’s name, a “D” atop an “N.” Other people have said the upright line with arms angled down, commonplace in the United States in the Vietnam War, especially, has roots in the early Christian era, representing a twisted or broken cross.

Trimarco said he put up the wreath as a general symbol of peace on earth, not as a commentary on the Iraq war or another political statement. In any case, there are now more peace symbols in Pagosa Springs, a town of 1,700 people 200 miles southwest of Denver, than probably ever in its history.

On November 28, twenty people marched through the town center carrying peace signs and then stomped a giant peace sign in the snow perhaps three hundred feet across on a soccer field, where it could be easily seen. “There’s quite a few now in our subdivision in a show of support,” Trimarco said.

A former president of the Loma Linda community, where Mr. Trimarco lives, said he had stepped in to help form an interim homeowners’ association. The former president, Farrell C. Trask, described himself as a military veteran who would fight for anyone’s right to free speech, peace symbols included.

Town Manager Mark Garcia said Pagosa Springs was building its own peace wreath, too. Garcia said it would be installed on a bell tower in the center of town. Reported in: *New York Times*, November 29. □

(censorship dateline . . . from page 16)

speakers

New York, New York

Two major American Jewish organizations helped block a prominent New York University historian from speaking at the Polish consulate here in October, saying the academic was too critical of Israel and American Jewry.

The historian, Tony Judt, is Jewish and directs New York University’s Remarque Institute, which promotes the study of Europe. Judt was scheduled to talk October 4 to a nonprofit organization that rents space from the consulate. Judt’s subject was the Israel lobby in the United States, and he planned to argue that this lobby has often stifled honest debate.

An hour before Judt was to arrive, the Polish Consul General Krzysztof Kasprzyk canceled the talk. He said the Anti-Defamation League and the American Jewish Committee had called and he quickly concluded Judt was too controversial.

“The phone calls were very elegant but may be interpreted as exercising a delicate pressure,” Kasprzyk said. “That’s obvious—we are adults and our IQs are high enough to understand that.”

Judt, who was born and raised in England and lost much of his family in the Holocaust, took strong exception to the cancellation of his speech. He noted that he was forced to cancel another speech at Manhattan College in the Bronx after a different Jewish group had complained. Other prominent academics have described encountering such problems, in some cases more severe, stretching over the past three decades.

The pattern, Judt says, is unmistakable and chilling. “This is serious and frightening, and only in America—not in Israel—is this a problem,” he said. “These are Jewish organizations that believe they should keep people who disagree with them on the Middle East away from anyone who might listen.”

The leaders of the Jewish organizations denied asking the consulate to block Judt’s speech and accused the professor of retailing “wild conspiracy theories” about their roles. But they applauded the consulate for rescinding Judt’s invitation.

“I think they made the right decision,” said Abraham H. Foxman, national director of the Anti-Defamation League. “He’s taken the position that Israel shouldn’t exist. That puts him on our radar.”

David A. Harris, executive director of the American Jewish Congress, took a similar view. “I never asked for a particular action; I was calling as a friend of Poland,” Harris said. “The message of that evening was going to be entirely contrary to the entire spirit of Polish foreign policy.”

Judt has crossed rhetorical swords with the Jewish organizations on two key issues. Over the past few years he has

written essays in the *New York Review of Books*, the *London Review of Books* and in the Israeli newspaper *Haaretz* arguing that power in Israel has shifted to religious fundamentalists and territorial zealots, that woven into Zionism is a view of the Arab as the irreconcilable enemy, and that Israel might not survive as a communal Jewish state. The solution, he argues, lies in a slow and tortuous walk toward a binational and secular state.

He has, of late, defended an academic paper—coauthored by professor Stephen M. Walt of Harvard University’s John F. Kennedy School of Government and John J. Mearsheimer, a professor at the University of Chicago—which argues the American Israel lobby has pushed policies that are not in the United States’ best interests and, in fact, often encourage Israel to engage in self-destructive behavior.

These are deeply controversial views—Foxman of the ADL and writer Christopher Hitchens, among others, have attacked the Walt and Mearsheimer paper as anti-Semitic. And Judt’s advocacy of a binational state has drawn a flock of critics, the more angry of whom accuse him of “pandering to genocide” as the Committee for Accuracy in Middle East Reporting in America put it. Former Bush speechwriter David Frum said Judt was pursuing “genocide liberalism.” Foxman has referred to Judt’s views of Israel as “an offensive caricature.”

The Mearsheimer and Walt paper, however, has drawn praise in some quarters in Israel, particularly on the left. Some Israeli writers, not least Israeli historian and social critic Amos Elon, also have praised Judt’s writings on Israel. Nor are Judt’s arguments without historical precedent: Massachusetts Institute of Technology linguist and political philosopher Noam Chomsky, who is Jewish, has advocated a binational solution in Israel, a view that three decades ago sparked such anger that police stood guard at his college talks. More recently, the ADL repeatedly accused DePaul University professor Norman G. Finkelstein, who is Jewish and strongly opposes Israeli policies, of being a “Holocaust denier.” These charges have proved baseless.

“There is an often organized and often spontaneous attempt to marginalize anyone in the Jewish world who offers a critique of Israeli policy,” said Rabbi Michael Lerner, editor of the liberal magazine *Tikkun*. “It’s equated with anti-Semitism and Israel denial.”

Foxman says such complaints are silly. “Nobody has called Judt an anti-Semite,” Foxman said. “People who are critical of Israel and of the Jewish people often flaunt their Jewishness. Why isn’t that an issue?”

Judt replies that he only reluctantly talks of his Jewishness, in no small part to inoculate himself against charges of anti-Semitism. “For many, the way to be Jewish in this country is to aggressively assert that the Holocaust is your identification tag,” Judt said. “I know perfectly well my history, but it never occurred to me that my most prominent identity was as a Jew.”

Just days later, another Judt speech was cancelled under similar circumstances. Judt was to have spoken October 17 at the Holocaust Research Center of Manhattan College, an independent Catholic institution in Riverdale. He withdrew, saying the college had put him in “an impossible position” by promising to critics that he would not speak about Israel.

Rabbi Avi Weiss of the Hebrew Institute of Riverdale said he had threatened to picket the college if Judt spoke at the Holocaust center. “I am a firm believer in First Amendment rights, and would have no problem with Judt speaking at some other forum, as long as an opposing view would be heard,” Rabbi Weiss wrote to the Holocaust center’s leaders. “But having someone who is a State of Israel denier speak at a Holocaust forum is a desecration of the memory of the six million,” he wrote.

“It’s always slightly mysterious to me what’s going on here,” Judt said. “I was going to lecture in the context of the Holocaust. It had nothing to do with Israel, but Rabbi Weiss objected to my presence in Riverdale.”

Rabbi Weiss countered: “Judt calls Israel an anachronism, and today being anti-Israel is essentially being anti-Jewish.”

At first, the College attempted to ease mounting tensions by introducing the lecturer with a disclaimer: Judt would speak on his mainstream views concerning the legacy of the Holocaust. He would not speak about Israel or criticize the Jewish State, the Holocaust Research Center assured the community.

But Judt said he preferred to cancel his appearance rather than be prefaced by such a disclaimer. “That presented me in a bad light,” he said. “The college put me in an impossible position. I essentially got them off the hook by withdrawing from giving a lecture this year.”

The college said it backed Judt’s appearance until he canceled it. “Judt is a well-respected historian and we welcomed him in an academic environment. We are open to debate and discussion on all of these issues,” a Manhattan College spokesman, Scott Silversten, said.

“I’m not anti-Israel. I’m very critical of Israel, but that’s not the same thing,” Judt said. “I’ve written often that it’s crucial to be educated about the Holocaust. Memory is not enough. Memorials are not enough. Why on earth Rabbi Weiss would want to picket me with Holocaust survivors is bizarre to me and it upsets me a lot.”

This was not the first time Judt and Weiss have clashed in Riverdale. When the Fieldston School in Riverdale held an event last May featuring Judt and Columbia professor Rashid Khalidi, Rabbi Weiss and other local rabbis objected to what they said was the unbalanced presentation of anti-Zionist viewpoints. Reported in: *Washington Post*, October 9; *New York Sun*, October 5.

New York, New York

When protesters stormed a Columbia University stage on October 4, shutting down a speech by the head of a fiercely

anti-immigration group, they not only stopped the program, but also hurtled the university back into the debate over free speech on campus. The fracas, which came just weeks after the president of Iran was invited to speak at Columbia and then told not to come, was captured live by Columbia's student-run television station, CTV, as well as by two commercial stations. It was shown repeatedly on television in New York and was widely available on the Internet.

Mayor Michael R. Bloomberg chastised Columbia for the disruption. "I think it's an outrage that somebody who was invited to speak didn't get a chance to speak," he said in response to a question on his weekly radio program. "Bollinger's just got to get his hands around this," Bloomberg added, referring to Columbia's president, Lee C. Bollinger. "There are too many incidents at the same school where people get censored," he said, using President Mahmoud Ahmadinejad of Iran as an example.

This time, the speaker, invited by a campus Republican group, was Jim Gilchrist, the head of the Minuteman Project, which assembled hundreds of volunteers last year, some armed, to patrol the Arizona-Mexico border for illegal immigrants.

Bollinger, a legal scholar whose specialty is free speech and the First Amendment, condemned the disruption of Gilchrist's speech. "Students and faculty have rights to invite speakers to the campus," he said. "Others have rights to hear them. Those who wish to protest have rights to do so. No one, however, shall have the right or the power to use the cover of protest to silence speakers. There is a vast difference between reasonable protest that allows a speaker to continue, and protest that makes it impossible for speech to continue."

Monique Dols, a senior in history at Columbia's School of General Studies, said she had mounted the stage in protest and unfurled a banner but that at such events in the past the speakers had kept going. "We have always been escorted off the stage and the event continues," she said, adding that this time the protesters were attacked. "We were punched and kicked" by supporters of the speaker, she said. "Unfortunately, the story being circulated is that we initiated the violence."

Dols said a large protest outside the building was initiated by the university's Chicano Caucus and supported by other groups, including Columbia's chapter of the International Socialist Organization, of which she is a member. She said the decision to march on stage was not organized but a "coming together" of some people "disgusted by the Minuteman's message." While college campuses have long been battlegrounds for freedom of speech issues, Columbia seems to attract more attention than most when such problems arise, perhaps because of its location in New York and its history of political protest.

Bollinger said he did not believe Columbia was unusual in the number of such disputes. Officials are studying whether disciplinary steps are warranted, he said.

"I think it was really wrong not to let him speak," said

Anusha Sriram, eighteen, a freshman studying political science and human rights, who moved to the United States from Mumbai. "He wasn't being violent. He was giving his view peacefully." She said by keeping Gilchrist from speaking, the protesters had unwittingly turned the tables of the discussion against themselves. "That just undermined the entire protest," she said. "Now everyone looks at the protest in a bad light instead of him in a bad light."

The program was sponsored by the Columbia University College Republicans, a five-year-old group that says on its Web site that it has six hundred members. Its president, Chris Kulawik, a junior, is described on the site as a "staunch conservative" who "endeavors to attain the cherished title of 'Most Despised Person on Campus.'"

"We always understood that this is a very left-wing campus," Kulawik said. "But to see your peers resort to physical violence because they disagree with you is very frightening." He said he had been working to ensure there is more campus security next week when his group has three more potentially controversial speakers, including Walid Shoebat, a former PLO member, and Hilmar von Campe, an author who fought for Germany during World War II.

Wei Wei Hsing, twenty, is a junior at Columbia and general manager of the Columbia Political Union, which has cosponsored events with the College Republicans, including a lecture by John Ashcroft last year. She criticized both Gilchrist's supporters and the protesters for yelling and shouting before the lecture started, setting a tone of intolerance. But she said the controversy simply reflected the political mood. "The polarization of the country in general is reflected in the microcosm of Columbia. And because people here happen to read the news more, and talk about politics, it's expressed more outwardly."

Columbia officials said while there had been pushing and shoving on stage, as protesters surrounded Gilchrist and others tried to defend him, there were no reports of injuries. Bollinger said he believed the importance of free speech must be reinforced repeatedly. He said he hoped to do "a number of things" to accomplish that on campus. Reported in: *New York Times*, October 7.

foreign

Sydney, Australia

A legislator is demanding the withdrawal of a school library book which paints his political hero and Australia's longest-serving prime minister as a tyrant. Sir Robert Menzies is listed alongside the likes of Nazi dictator Adolf Hitler, Cambodian ruler Pol Pot and the deposed Iraqi leader Saddam Hussein in the children's reference book *100 Greatest Tyrants*, which is used by students at a Mount Isa high school.

Senator George Brandis has slammed the book, by British author Andrew Langley, describing it as offensive

and inappropriate for history studies in any Australian school. "Of course it's absurd," Senator Brandis said. "It introduces students to the notion that there is a kind of moral equivalence between some of the most evil men in the history of the world and an Australian political leader who has been a beacon of liberal democracy."

The book, published a decade ago, lists Menzies among one hundred so-called tyrants, right after the notorious Chinese communist leader Mao Zedong. Also listed are ruthless conqueror Genghis Khan, Italian dictator Benito Mussolini and Chilean ruler Augusto Pinochet.

The 110-page volume is part of the library collection at Mount Isa's Good Shepherd Catholic College, where even the school's principal, Bernard Durie, admitted the book is flawed. "Obviously it's twaddle to suggest Menzies was a tyrant in the same class as Attila the Hun and that crowd," Durie said.

But he has refused to remove the book from the library, describing it as a useful resource for generating debate and critical thinking skills among students.

The Queensland Teachers' Union has backed the school's decision, accusing Senator Brandis of stepping over the line by calling for the book to be withdrawn. "I think that what he's on about is a dangerous censorship practice," said Lesley McFarlane, the union's assistant secretary for research. "I thought the days of burning books were gone."

The controversy over the school library book emerged just as the Federal Government is considering a uniform national curriculum for Australian schools. Both Prime Minister John Howard and federal Education Minister Julie Bishop have criticized the teaching of history in particular, arguing it should be a stand-alone subject, free of trendy educational fads run by ideologues. Reported in: *Sydney Courier-Mail*, October 23.

Sydney, Australia

A leading children's publisher has dumped a novel because of political sensitivity over Islamic issues. Scholastic Australia pulled the plug on *The Army of the Pure* after booksellers and librarians said they would not stock the adventure thriller for younger readers because the "baddie" was a Muslim terrorist. A prominent literary agent has slammed the move as "gutless", while the book's author, award-winning novelist John Dale, said the decision was "disturbing because it's the book's content they are censoring".

"There are no guns, no bad language, no sex, no drugs, no violence that is seen or on the page," Dale said, but because two characters are Arabic-speaking and the plot involves a mujaheddin extremist group, Scholastic's decision is based "100 percent (on) the Muslim issue".

This decision was at odds with the recent publication of Richard Flanagan's bestselling *The Unknown Terrorist* and Andrew McGahan's *Underground* in which terrorists are portrayed as victims driven to extreme acts by

the failings of the West. In McGahan's *Underground*, Muslims are executed en masse or herded into ghettos in an Australia rendered unrecognizable by the war on terror.

Scholastic's general manager for publishing, Andrew Berkhut, said the company had canvassed "a broad range of booksellers and library suppliers", who expressed concern that the book featured a Muslim terrorist. "They all said they would not stock it," he said, "and the reality is if the gatekeepers won't support it, it can't be published."

In March 2004, Scholastic commissioned Dale to deliver "a tough, snappy thriller", with then publisher Margrete Lamond saying they wanted their child readers to "break out in sweats and their eyes to bulge without giving them actual nightmares". Dale, director of the Centre for New Writing at the University of Technology, said he wanted *Army of the Pure* to be a contemporary action adventure that would appeal to his son, "a book he could not put down". Reported in: *The Australian*, November 25.

Berlin, Germany

A leading German opera house canceled performances of a Mozart opera because of security fears stirred by a scene that depicts the severed head of the Prophet Muhammad, prompting a storm of protest about the renunciation of artistic freedom. The Deutsche Oper in Berlin said it had pulled "Idomeneo" from its fall schedule after the police warned that the staging of the opera could pose an "incalculable risk" to the performers and the audience.

The Deutsche Oper's director, Kirsten Harms, said she regretted the decision but felt she had no choice because she was "responsible for all the people on the stage, behind the stage and in front of the stage."

Political and cultural figures throughout Germany condemned the cancellation, which is without precedent here. Some said it recalled the decision of European newspapers not to print satirical cartoons about Muhammad, after their publication in Denmark generated a furor among Muslims.

Michael Naumann, a former German culture minister, said, "It's a slap in the face of artistic freedom, by the artists themselves." Naumann, now the publisher of the weekly paper *Die Zeit*, added, "The pope showed the way by being so extraordinarily apologetic."

The sulfurous public reaction prompted some people to speculate that the decision might eventually be reversed. Harms herself said "Idomeneo," which was first staged by the Deutsche Oper in 2003, would remain on the opera's program. It could be performed later, Harms said, though she would have to consider the political and diplomatic aspects of "this complex issue."

The disputed scene is not part of Mozart's 225-year-old opera, but was added as a sort of coda by the director, Hans Neuenfels. In it, the king of Crete, Idomeneo, carries the

heads of Muhammad, Jesus, Buddha and Poseidon, god of the sea, onto the stage, placing each on a stool. The bloody spectacle aroused controversy among Muslims and Christians when the Deutsche Oper first staged the production. But the opera was not the target of any organized protests, and the Deutsche Oper put four performances on its calendar for this November.

This past summer, the Berlin police said they received a call from an unidentified person, who warned that the opera was “damaging to religious feelings.” The caller did not make a specific threat against the opera.

“All this came in light of the cartoon controversy,” said a police spokesman, Uwe Kozelnik. “We started to investigate, and finally concluded that disturbances could not be ruled out.”

While the police said they did not pressure the Deutsche Oper to cancel the production, they supported the decision. Berlin’s chief official for security matters, Ehrhart Körting, drew a parallel between the decision and that of German papers to resist reprinting the cartoons depicting Muhammad. “Even the German journalists’ association criticized the reprinting of the cartoons because their publication could hurt the religious feelings of one group of people,” Körting said in a statement.

Muslim leaders in Germany reacted cautiously to the furor. The leader of the Islamic Council, Ali Kizilkaya, told a radio station in Berlin that he welcomed the cancellation, saying a depiction of a decapitated Muhammad “could certainly offend Muslims.”

“Nevertheless, of course, I think it is horrible that one has to be afraid,” Kizilkaya said, “That is not the right way to open dialogue.”

At a news conference, Harms said she broached the possibility of removing the offending scene with Neuenfels—something she did not want to do. When he resisted, she let the matter drop. However, a lawyer for Neuenfels, Peter Raue, said Harms telephoned the director September 9 to tell him she planned to cancel the performances. The issue of tinkering with the ending never came up, Raue said, and in any event, “you couldn’t change it; it is part of the story.”

The scene devised by Neuenfels puts a sanguinary ending on an opera that, in the way Mozart wrote it, ends with King Idomeneo giving up his throne to appease the god of the sea, and blessing the romantic union of his son, Idamante, with the Greek princess Iliia. The severed heads of the religious figures, Raue said, was meant by Neuenfels to make a point that “all the founders of religions were figures that didn’t bring peace to the world.”

André Kraft, spokesman for the Komische Oper, a more adventurous opera house, where Neuenfels is engaged in another Mozart production, described the sixty-five-year-old director as “a secularist who does not believe religion solves the problems of the world.” Reported in: *International Herald-Tribune*, September 27.

Tehran, Iran

Iran’s conservative cultural body has banned a female writer’s award-winning bestseller, which deals with a married woman’s secret and unrequited love for another man, a press report said November 27. “The ministry of culture and Islamic guidance has prohibited publication of *I Will Turn out the Lights*, by Zoya Pirzad,” the Kargozaran paper quoted publisher Alireza Ramezani as saying.

“We have not been informed of the reasons for the ban,” he said, adding the vetting officials had refused to renew the publication permit for the book, which has sold more than 200,000 copies in 23 editions since 2001.

Pirzad’s novel, which has bagged four prestigious literary awards in Iran, tells the story of a bored Armenian housewife who falls in love with a melancholic widower in early 1960s in the oil-city of Abadan.

Production of music, films and books is subject to supervision by the ministry of culture, which has introduced a new initiative requiring publishers to renew permits for new editions of the same book. The ministry has held up the publication of hundreds of new titles and reprints over the past months, publishers say.

Among the books banned are Persian translations of Tracy Chevalier’s bestseller *Girl with a Pearl Earring*, which had reached a sixth edition, and Dan Brown’s *The Da Vinci Code*. The widely-acclaimed Iranian classic, *The Blind Owl*, written in the 1930s by Sadegh Hedayat has also been banned.

Iranian press and publication enjoyed some freedom under the reformist presidency of Mohammad Khatami from 1997 to 2005, with scores of women joining the Iranian literati and sweeping awards. In a report released in September, the reformist government’s cultural body came under fire by conservative MPs for permitting works the deputies said promoted decadence, unmarried sex, and secularism. Culture Minister Mohammad Hossein Saffar-Harandi has vowed to promote religious and revolutionary art, since he was appointed to the ministry in August 2005 by hardline President Mahmoud Ahmadinejad.

“The new government intends to take positive steps for reviving neglected values and considering religious teachings in the cultural field,” he said in a speech in June. Reported in: news24.com, November 28.

Istanbul, Turkey

A prize-winning novelist went on trial September 21 accused of belittling Turkishness in the latest of a string of cases highlighting the country’s stuttering reform process. Elif Shafak’s *The Bastard of Istanbul* has been at the top of Turkish bestseller lists since its publication in March, winning critical acclaim for its story of the friendship between two girls, an Armenian American and a Turk. But its treatment of the mass murder of Ottoman Armenians in 1915 angered Kemal Kerincsiz, the nationalist lawyer behind last December’s trial of Orhan Pamuk, Turkey’s best-known author.

Sitting in his Istanbul office, Kerincsiz soon finds one of the offending passages. “I am the grandchild of genocide survivors who lost all their relatives at the hands of Turkish butchers in 1915,” he reads, quoting a minor Armenian character, adding: “There’s plenty more.”

The prospect of being tried for the figments of her imagination strikes Shafak as grotesque. But she has no doubts about the seriousness of her situation. She could face up to three years in jail. “My accusers will do everything they can to keep this case going,” she says. “It’s going to be long and tedious.”

Few have forgotten Pamuk’s trial, when nationalists smashed his windshield and attacked foreign observers. For weeks, a Web site belonging to Kerincsiz’s group called for protests against this “newly chosen princess of capitulationist intellectuals”. Shafak’s supporters have called on the Istanbul prosecutor to investigate Kerincsiz for incitation to violence.

The trial is symbolic of a deep rift in the country. For nationalists, the clash of civilisations is real, and Muslim Turkey belongs with the east. They claim the EU is trying to strip away this identity. Shafak, who grew up in Europe and has lived in the United States, disagrees. “My ideal is cosmopolitanism, refusing to belong to either side in this polarised world,” she says. “Ambiguity, synthesis: these are the things that compose Turkish society, and that is not something to be ashamed of.”

But nationalism is on the increase, bolstered in part by the sense that Brussels is playing with Turkey over its accession bid. Formerly at the forefront of the reforms that helped it gain EU candidate membership last year, the government, too, is affected by the new scepticism.

Pressured by Brussels and Turkish liberals to get rid of the penal code article under which Shafak is being tried, the justice minister, Cemil Cicek, responded dismissively: “Are we going to change laws just because Europe wants us to? Changing laws isn’t like changing your tie.” Reported in: *Guardian*, September 21. □

(is it legal? . . . from page 28)

Adelstein also complained that the FCC had not acted on a long-standing challenge to the Bono decision.

The four profanity findings at issue had no fine attached and the FCC promised it would not hold them against stations at renewal time. Thus, the FCC decided there was no need to give stations a chance to respond. The networks, their affiliate associations, and Hearst-Argyle TV took those decisions directly to court, since the FCC had bypassed the normal appeals process in what it said was an effort to provide guidance—which broadcasters have clamored for—without adverse consequences.

In essence, the FCC was saying: These are the words we believe we can fine going forward. But after the networks sued, the FCC conceded it had made a mistake by not letting them respond and asked the court to let it review the decisions after getting that input.

In a combined filing to the FCC September 21, CBS, Fox and NBC took aim at the entirety of the FCC’s indecency enforcement regime, saying they wanted the commission to “rescind its radical new interpretation of indecency rules.” The networks asked the FCC to “reverse its radically expanded efforts to regulate through punitive forfeitures what it considers to be “indecent speech.”

They argued that the FCC’s previous “cautious and limited” enforcement are the “centerpiece” of its defense of having the power to regulate broadcast speech. It is that regime the Supreme Court narrowly upheld, expressly excluding “isolated” uses of “potentially offensive” language, which the FCC is now punishing.

That previous FCC policy—stemming back to the 1970s—did not take action against isolated or fleeting expletives.

The networks argued that the FCC’s departure from that restraint has been “an unprecedented [and unconstitutional] intrusion into the creative and editorial process and threatens to bring about the end of truly live broadcast TV.” The FCC disagreed on all counts.

The networks are likely to use similar arguments in their briefs to the court, which will now proceed to hear arguments.

The FCC has argued it reviewed the decisions to give broadcasters a chance to make their case, but the move was seen by some broadcasters as an attempt to repair the FCC’s case before having to defend it in federal court. Reported in: *Broadcasting and Cable*, November 6.

New York, New York

New standards adopted by the Federal Communications Commission to censor “indecency” on the airwaves are overly vague and unconstitutional, a coalition of twenty free speech organizations, community broadcasters, filmmakers, performers and writers argued in a legal brief filed November 30.

In the *amicus* brief, the groups urged the U.S. Court of Appeals for the Second Circuit to overturn an FCC ruling issued earlier this year that applied new standards for censoring indecency and profanity to complaints received between 2002 and 2005. The groups urged the court to throw out the FCC’s censorship scheme altogether, arguing that “the FCC’s efforts to regulate in this area have proven to be constitutionally unworkable.”

“The FCC’s new and ever-shifting rules censoring ‘profanity’ and ‘fleeting expletives’ on the airwaves have no place in our free, diverse and pluralistic culture,” said Marjorie Heins, Coordinator of the Free Expression Policy

Project at the Brennan Center for Justice, who prepared the brief. “The FCC’s attempted distinctions among various common words are capricious and irrational. The whole indecency and profanity regime should be struck down.”

In the brief, the groups say the FCC standards are not only overly broad, but inconsistent. For example, the FCC ruled last year that broadcasts of the fictional film *Saving Private Ryan* were not indecent or profane because the fleeting expletives were “integral to the film’s objective.” Yet, supposedly applying the same standards, it condemned Martin Scorsese’s PBS documentary, *The Blues*, for including similar fleeting expletives.

“The FCC’s arbitrary censorship system is no more tolerable than allowing government agents to tear pages out of library books,” said Steven R. Shapiro, National Legal director of the American Civil Liberties Union, which joined the brief. FCC censorship only applies to the airwaves.

The new rules have already caused some non-commercial stations to self-censor because they cannot afford to pay the enhanced legal fines that may now be imposed by the FCC. PBS recently bleeped soldiers’ language from the war documentaries *A Soldier’s Heart* and *Return of the Taliban*, and from Frontline’s *The New Asylums*. Language in PBS’s documentary on terrorism in America, *The Enemy Within*, was purged even though it documented the particular words used by an informant to threaten a suspect. Rocky Mountain PBS canceled the historical documentary *Marie Antoinette* because it included sexually suggestive drawings.

The case before the Second Circuit, *Fox Television v. FCC*, began after the FCC issued an “Omnibus Order” in March condemning ten programs as indecent or profane, and exonerating more than a dozen others. Four rulings—against an episode of *NYPD Blue*, *The Early Show*, and two Billboard Music Awards broadcasts—were not accompanied by fines and, therefore, could be directly appealed to the court. In the *NYPD Blue* case, the agency said the word “bullshit” was not permissible, but allowed the word “dick-head.” After the appeals court allowed the FCC’s request to reconsider its rulings, the Commission changed its position on *NYPD Blue* and *The Early Show*, but reaffirmed the rulings against the two Billboard programs.

Among the artists’ groups represented in the brief are the Directors Guild of America (DGA), Screen Actors Guild (SAG), Writers Guild of America East (WGAE), Writers Guild of America West (WGAW), PEN American Center and the American Federation of Television and Radio Artists (AFTRA).

“Artists need to know that they can exercise their First Amendment rights without fear of sanctions imposed by the government,” said Thomas R. Carpenter, General Counsel and National Director of Legislative Affairs for AFTRA. “A vague and ill-defined standard of decency is a threat to the freedom of expression that AFTRA members and all Americans hold dear.”

In addition to the guilds, the Brennan Center, the ACLU, PEN American Center and AFTRA, the brief was joined by American Booksellers Foundation for Free Expression, Creative Coalition, Film Arts Foundation, First Amendment Project, International Documentary Association, Minnesota Public Radio/American Public Media, National Alliance for Media Arts and Culture, National Coalition Against Censorship, National Federation of Community Broadcasters, New York Civil Liberties Union, Re:New Media, and Working Films. Reported in: Press Release, November 30.

child pornography

Montgomery, Alabama

Jeff Pierson is a photographer whose action shots of hopped-up American autos laying waste to the asphalt at Alabama dragways have appeared in racing magazines and commercial advertisements. Pierson’s Web site boasted he has the “most wonderful wife in the world and two fantastic daughters.” And until recently, he ran a business called Beautiful Super Models that charged \$175 for portraits of aspiring models under eighteen.

In a federal indictment announced in late November, the U.S. Department of Justice accused Pierson, forty-three, of being a child pornographer—even though prosecutors acknowledge there’s no evidence he has ever taken a single photograph of an unclothed minor. Rather, they argue, his models struck poses that were illegally provocative.

“The images charged are not legitimate child modeling, but rather lascivious poses one would expect to see in an adult magazine,” Alice Martin, U.S. attorney for the northern district of Alabama, said in a statement.

Pierson’s child pornography indictment arose out of an FBI and U.S. Postal Inspection Service investigation of so-called child modeling sites, which have been the subject of a series of critical congressional hearings and news reports in the last few years. An August article in the *New York Times*, for instance, called the modeling Web sites “the latest trend in child exploitation.”

In addition to Pierson, the U.S. attorney also announced indictments against Marc Greenberg, forty-two, Jeffrey Libman, thirty-nine, partners in a Fort Lauderdale, Florida, business called Webe Web, which in turn ran the now-defunct ChildSuperModels.com site. It was one of the larger sites that featured photographs of child models, allegedly from Pierson, and became the target of a report on Florida’s NBC6 affiliate suggesting that it was a magnet for pedophiles.

First Amendment scholars raised questions about the Justice Department’s attack on Internet child modeling. They warned that any legal precedent might endanger the mainstream use of child models in advertising and suggested that prosecutors’ budgets might be better spent investigating actual cases of child molestation.

“I don’t know what the DOJ’s trying,” said Lee Tien, an attorney at the Electronic Frontier Foundation, a civil liberties group. “The best I can say is that it’s puzzling that they would devote investigative and law enforcement resources to something (like this). This is a far cry from what folks normally think of as child pornography.”

The Web sites that prompted the indictments are now offline. But copies saved in Google’s cache and through Archive.org show the photographs in question depicted girls wearing everything from sweaters to, more frequently, swimsuits and midriff-baring attire. Parents appear to have given their consent.

Because no sex or nudity is involved, the prosecutions raise unusual First Amendment concerns that stretch beyond mere modeling-related Web sites: children and teens in various degrees of undress appear in everything from newspaper underwear advertisements to the covers of *Seventeen* and *Vogue*.

When actress and model Brooke Shields was fifteen years old, for instance, she appeared in a racy Calvin Klein jean advertisement featuring the memorable line, “Nothing comes between me and my Calvins.” Shields also appeared nude at twelve years old in an Oscar-nominated movie called *Pretty Baby* that was set in a New Orleans brothel. Similarly, fourteen-year-old Jodie Foster, wearing revealing clothing, played a pre-teen prostitute in Martin Scorsese’s *Taxi Driver*.

Sally Mann, named *Time* magazine’s “photographer of the year” in 2001, was attacked by critics for featuring nude images of her own children in a book called *Immediate Family*. Famed photographer Jock Sturges’ photos often feature nude boys and girls on the beaches of California and France—images that are far more revealing than those of swimsuit-clad youths. Reported in: zdnet.com, November 30. □

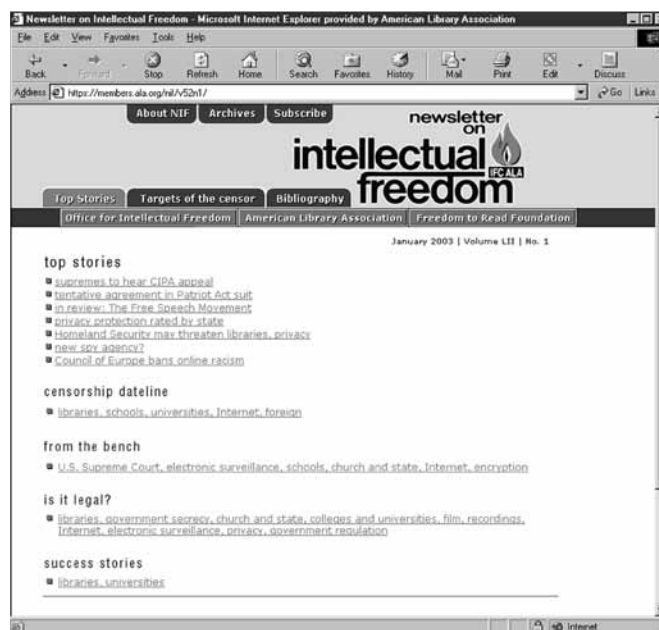
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