newsletter on intellectual freedom

IFC ALA

Editor: Judith F. Krug, Director
Office for Intellectual Freedom, American Library Association
Associate Editor: Henry F. Reichman, California State University, Hayward

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# ALA wins freedom of speech award

Chicago's Newberry Library presented the American Library Association with the John Peter Altgeld Freedom of Speech Award July 29 during the Twentieth Annual Bughouse Square Debates, a celebration of outdoor soapbox oratory sponsored by the library, in the city's Washington Square Park. The award, named after the Illinois governor who in 1893 pardoned the three surviving defendants in the Haymarket Riot trial, honors a person or organization that has achieved recognition as a defender of free speech and ideas.

The award was presented by University of Chicago Law School Professor Geoffrey Stone, who cited the Association's "principled defense over many years of the freedom to read, think, write, and speak," and singled out the ALA *Library Bill of Rights*, the work of the Office for Intellectual Freedom and Banned Books Week, and the Freedom to Read Foundation's challenges to the USA Patriot Act of 2001.

This is the first time the award has gone to an organization rather than an individual. Previous recipients have included peace activist Kathy Kelly, Chicago politician Leon Despres, social historian Lila Weinberg, and former Illinois Supreme Court Justice Seymour Simon. ALA Executive Director Keith Michael Fiels accepted the award on behalf of the Association.

*Published by the ALA Intellectual Freedom Committee,*
*Kenton L. Oliver, Chair*

# in this issue



## targets of the censor

**books**



**periodicals**



**television**




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



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## Library Connection's "John Doe" court records released

Supreme Court Justice Ruth Bader Ginsburg ordered August 2 the full disclosure of court records related to *Doe* v. *Gonzales*—the challenge to the FBI's 2005 demand that Connecticut's Library Connection consortium turn over records of patrons' computer use. The next day, the American Civil Liberties Union posted the documents, which include Justice Ginsburg's October 7, 2005, decision not to reverse a lower-court gag order on Library Connection officers Barbara Bailey, Peter Chase, George Christian, and Janet Nocek; the unredacted National Security Letter (NSL) that the plaintiffs had challenged; and the September 21, 2005, *New York Times* article identifying the Library Connection as John Doe based on an insufficiently redacted Justice Department filing that had been posted online.

The original NSL had sought the February 15, 2005, access logs generated between 2 and 2:45 p.m. Eastern time, for a specific Library Connection member's IP address. Another unsealed item is the September 9, 2005, ruling by U.S. District Court Judge Janet Hall, who lifted the gag order specified by the NSL pending further judicial review. Judge Hall cited the September 18, 2003, remarks in which then-Attorney General John Ashcroft accused "those who fear executive abuse of the increased access to library records under the Patriot Act of 'hysteria,'" concluding that "the potential for abuse is written into the statute." Hall also stated that lifting the gag order would pose no threat to national security because the number of people whose records were sought "would likely be in the tens, if not hundreds, of thousands."

"As an American, I am embarrassed that our government would go to such extremes to stifle free and open debate and keep nonsensitive information from the public," said Library Connection Executive Director George Christian in a prepared statement.

Ginsburg's directive came two months after the FBI dropped its demand for the patron records it had sought; the agency subsequently stated it also had no further interest in enforcing nondisclosure of the *Doe* v. *Gonzales* court documents. Reported in: *American Libraries* online, August 4.

## PATRIOT Act challenge allowed to proceed

Almost three years after initial arguments were presented, a federal judge in Detroit has refused the government's request to dismiss a lawsuit by the American Civil Liberties Union challenging the constitutionality of the USA PATRIOT Act. The lawsuit, filed July 30, 2003, was the first legal challenge to the controversial antiterrorism act passed by Congress after the September 11 attacks.

The ACLU filed the complaint on behalf of the Muslim Community Association of Ann Arbor and five other nonprofit Muslim charities, advocacy groups, and social service organizations. Specifically, the ACLU seeks to block Section 215 of the Patriot Act, which permits FBI access to books and documents via the secret Foreign Intelligence Surveillance Court in Washington, D.C. The charge contends that such behavior—including searches of library records—violates rights to privacy, due process, and free speech. The ACLU claims that the resultant chilling effect has stopped Muslims from attending mosque, making charitable donations, and expressing opinions.

The government argued at a December 2003 hearing that Section 215 did not violate the Fourth Amendment, and asked for the suit to be dismissed. In March of this year, Congress amended the PATRIOT Act, prompting the Justice Department to state that any constitutional deficiencies had been corrected. Among the changes is the right of any institution receiving a governmental request for information to consult with a lawyer before providing materials—although the institution must wait one year before speaking publicly about the request.

U.S. District Court Judge Denise Hood's fifteen-page September 29 decision granted the ACLU thirty days to modify its original grievance to address the March amendments. Hood wrote that her ruling took "an extraordinary amount of time" and that "the issues raised on the complaint and in the government's papers are important to us all."

Emily Sheketoff, director of the American Library Association's Washington Office, said, "The ALA continues to argue that aspects of the USA PATRIOT Act are unconstitutional and we will fight to get the changes made which will allow people to feel both safe and free." Reported in: *American Libraries* online, October 6.

## EPA begins closing libraries before Congress acts

The U.S. Environmental Protection Agency moved ahead this summer to shut down libraries, end public access to research materials and box up unique collections on the assumption that Congress will not reverse President Bush's proposed budget reductions, according to agency documents released August 21 by Public Employees for Environmental Responsibility (PEER). At the same time, EPA's own scientists are stepping up protests against closures on the grounds that it will make their work more difficult by impeding research, enforcement and emergency response capabilities.

In an August 15, 2006, document titled "EPA FY 2007

Library Plan," agency management indicated that it would begin implementing President Bush's proposed budget cuts for the next fiscal year, which begins in October, without waiting for Congress to act. The memo describes what EPA terms "deaccessioning procedures" (defined as "the removal of library materials from the physical collection") for its network of twenty-six technical libraries. Under the plan, regional libraries, located in Chicago, Dallas and Kansas City, serving fifteen Midwestern and Southern states were to be closed by September 30. Other regional library hours and services will be gradually reduced; public access to EPA libraries and collections will end as soon as possible; as many as eighty thousand original documents which are not electronically available will be boxed up ("put their collections into stasis," in the words of the EPA memo) and shipped for eventual "digitizing."

EPA scientists represented by the American Federation of Government Employees (AFGE), the largest federal employee union, had previously sent a "Demand to Bargain" on the issue, but EPA managers dismissed that demand as premature. The August 15 EPA memo, however, showed that the union concern was far from premature. On August 16, the AFGE National Council of EPA Locals filed a formal grievance demanding that all library closures be put on hold until affected scientists can negotiate the matter as required in the collective bargaining agreement, writing:

"After October 1, 2007, three Regions will no longer have a physical library at all. Library hours or core library services will be reduced in other Regions that keep their physical libraries open. Management has been insisting that it can effectively 'do more with less,' and continue to provide the same level of library services to all of EPA's staff members despite the reduction in the number of library contractor staff. The Council is not convinced that this is the case."

"The central fiction is EPA's promise to digitize its entire massive collection, making everything available online someday, without any dedicated funds amid sharply reduced budgets," stated PEER Executive Director Jeff Ruch, noting EPA studies show the cuts will actually lose money due to additional professional staff time that will have to be spent tracking down research materials now assembled by the libraries. "The idea that library closures are a purely budgetary move is increasingly hard to swallow."

A key tenet of the new plan is that all research requests will be centrally controlled. The plan calls for "discouraging establishment of divisional or branch mini-libraries" so that central staff can "have knowledge of [the] location" of all research materials. In a mass letter of protest signed this June by representatives for ten thousand EPA scientists and researchers, more than half the total agency workforce, employees contend that the library plan is designed to "suppress information on environmental and public health-related topics."

"What is going on inside EPA is positively Orwellian," concluded Ruch. Reported in: www.peer.org, August 21.

## Education Department mined student records as part of FBI antiterrorist operation

The U.S. Education Department has given the Federal Bureau of Investigation information on hundreds of students who applied for financial aid over the past five years as part of the federal government's antiterrorism investigations following the attacks of September 11, 2001.

The program, known as Project Strike Back, was aimed at finding out if suspected terrorists were financing their operations through federal student aid obtained by using other students' identities. The secret effort was uncovered by a journalism student at Northwestern University, Laura McGann.

Under the program, the FBI provided names to the Education Department to cross-check in the department's database of applicants for student financial aid. The repository keeps information on some fourteen million students per year who apply for federal financial aid by completing the Free Application for Federal Student Aid, or FAFSA, the standard application form that the federal government, state governments, and most colleges use to determine students' eligibility for financial aid. Included in the database are students' names, addresses, dates of birth, Social Security numbers, and driver's-license numbers.

Fewer than a thousand names were checked in the database over five years, Mary Mitchelson, general counsel to the Education Department's inspector general, said. The project was run through her office.

"It's not unusual for the inspector general to cooperate with law enforcement on a number of investigations," Mitchelson said.

Most of the program's work occurred in the months after September 11, Mitchelson added. Overall, fewer than six hundred hours were spent on the program by the department, and fewer than fifty of them in the last four years. The project was stopped in June.

FBI officials would not comment on whether any official investigations were begun as a result of the project. Mitchelson said that, as part of obtaining the records, Education Department officials analyzed them for evidence of student-aid fraud, but no cases were opened on those fronts.

Catherine Milhoan, an FBI spokeswoman, said the project was started on September 22, 2001. "This project was just one of several utilized by the FBI in the process of investigations," she said. "In the wake of 9/11, it was the

job of the FBI to connect the dots and conduct counterterrorism investigations."

News of the secret data-mining effort came at a time when college officials are divided over a proposal to establish a so-called unit-record system to track individual students' education progress. The proposal is a key element of the final draft report issued in August by the federal Commission on the Future of Higher Education, which was convened by the secretary of education, Margaret Spellings.

Private-college leaders, in particular, worry that not enough safeguards exist to ensure the security of the data. "This is troubling, but not surprising," said Terry W. Hartle, senior vice president for government and public affairs at the American Council on Education. "It's hard to be surprised when the government is mining every single database. In the war on terror, there are no safe harbors."

Hartle called the Education Department's project a "perfect illustration of the dangers of the unit-record system." He pointed out that, to receive federal aid, students must either be U.S. citizens or have a green card. "This is about finding Timothy McVeigh," he said. "This is not about finding Mohammed Atta."

"This case is another example of Big Brother gone wild," said Michael D. Ostrolenk, national director of the Liberty Coalition, which consists of privacy-rights organizations across the political spectrum. "In the age of everything is a national-security issue, we are destroying the very liberties and privacy rights which make our country unique and great in the history of the world."

Last year, an earlier proposal for the unit-record system drew fire from Rep. John A. Boehner of Ohio, then chair of the education committee and now majority leader in the House of Representatives.

The department's privacy notice on the Fafsa form alerts students that the data they provide may be sent to "a foreign, federal, state, or local enforcement agency if the information that you submitted indicates a violation or potential violation of law."

For the most part, the department is not covered by the Family Educational Rights and Privacy Act, which bars colleges from releasing student records that include personally identifiable information without the permission of students or their parents.

Steve McDonald, general counsel at the Rhode Island School of Design and a leading expert on federal privacy law, said FERPA "doesn't apply directly to the department, but it could apply indirectly" if a college added information to the federal student-aid forms. "Any records we supply to the department carry FERPA with them," he said.

For her part, McGann will begin a full-time job at Dow Jones Newswire in September. She graduated from Northwestern's Medill School of Journalism in June and was one of several students who were part of a new venture by the Carnegie Corporation and the John S. and James L. Knight Foundation to revitalize journalism education. The Carnegie-Knight Initiative for the Future of Journalism Education, in part, seeks to develop a national investigative-reporting team with students from five participating universities. The students focused on a theme: privacy and civil liberties in the wake of the September 11 terrorist attacks.

McGann said she found out about the Education Department project from a brief mention of it in a Government Accountability Office report about data-mining programs at various federal agencies. "It struck me that the Education Department was doing data mining," she said. "I thought that was sort of unusual."

She confirmed the existence of the program through a report from the Education Department's inspector general. In June, she filed a request with the department seeking additional details of the project under the federal Freedom of Information Act. She received the information in August, allowing her to complete the article.

"I never would have thought in January that I would be working on a story about the Department of Education's role in the post-9/11 world," said McGann. Reported in: *Chronicle of Higher Education* online, August 31.

## teens support First Amendment protection for media

A large-scale survey by the John S. and James L. Knight Foundation has found that while high school students in the U.S. are more knowledgeable about the First Amendment than they were two years ago, they are increasingly divided on whether they think it goes too far in protecting the right to free speech.

In general, today's high school students are more likely to take classes that teach about the First Amendment than they were two years ago, and more students now support protections for journalists. Students also increasingly support the right of student publications to report without oversight from school officials.

The survey also found, however, that students today think that the First Amendment guarantees too many rights, and there is a growing polarization between students who support the fundamental principle of the law and those who do not.

Teachers, according to the report, are increasing in their appreciation of the rights granted by the Amendment, but they don't think schools do a very good job in teaching it.

"We see progress," said Eric Newton, Knight's director of Journalism Initiatives in a statement, "but there are still serious problems."

The survey questioned almost fifteen thousand high school students from across the country, as well as over eight hundred teachers. Below are some key findings of the survey.

- Seventy-two percent of students report they have taken classes dealing with the First Amendment, compared with 58 percent two years ago.
- Fifty-four percent of students said all newspapers should be able to publish freely without government approval, up from 51 percent two years ago.
- Forty-five percent said the First Amendment goes too far, versus 35 percent in 2004.
- Two years ago, 38 percent of teachers thought the press had too much freedom. That figure dropped this year to just 29 percent.

Reported in: *Editor and Publisher*, September 18.

## Leonard Levy

Leonard W. Levy, an exacting, dogged, prolific and combative constitutional historian and First Amendment advocate whose work was frequently cited by the United States Supreme Court and won him a Pulitzer Prize, died on August 24 in Ashland, Oregon. He was 83. His death followed years of poor health and a recent stroke, said his wife, Elyse.

Professor Levy's Pulitzer, the 1969 prize for history, was awarded for his *Origins of the Fifth Amendment*. He published almost forty other books, on topics including religious liberty, Thomas Jefferson and constitutional interpretation. But it was his work on the scope of the First Amendment's protection of free expression that gained the most attention. His *Legacy of Suppression: Freedom of Speech and Press in Early American History*, published in 1960, argued that the framers of the Constitution had a crabbed view of press freedom, limited largely to prohibiting prior censorship and perfectly comfortable with subsequent punishment for speech they thought harmful, including attacks on the government.

"I have been reluctantly forced to conclude," Professor Levy wrote, "that the generation which adopted the Constitution and the Bill of Rights did not believe in a broad scope for freedom of expression, particularly in the realm of politics."

That assessment, at odds with the conventional wisdom, gave rise to withering attacks on his work. Justice Hugo L. Black of the Supreme Court, a First Amendment absolutist, wrote in a letter to a friend that the book was "probably one of the most devastating blows that has been delivered against civil liberty in America for a long time."

But Professor Levy was capable of changing his mind. "He was scrupulously honest and fair in his assessments of his own writings and other people's writings," said Kenneth L. Karst, a collaborator. Indeed, Professor Levy revised *Legacy of Suppression* in 1985 and gave it a telling new title: *Emergence of a Free Press*.

"Seldom has a major constitutional scholar reversed his field under such brilliant light and with such a startling admission," the broadcast journalist and First Amendment authority Fred W. Friendly wrote at the time.

Professor Levy beat a forthright retreat from some but hardly all of his earlier conclusions. "I overdid it," he said of the earlier version of the book. "I had a novel position, which I overstated."

His revised views were, he said, a result of an intense study of early America's newspapers, which he found contemptuously and scorchingly critical of the government. He had been too focused on legal theory at the expense of practical reality, he wrote. "Freedom of the press," he wrote in his revision, "meant that the press had achieved a special status as an unofficial fourth branch of government."

But he stood by what he called his principal thesis: that the framers had not intended to outlaw libel suits and

*(continued on page 323)*

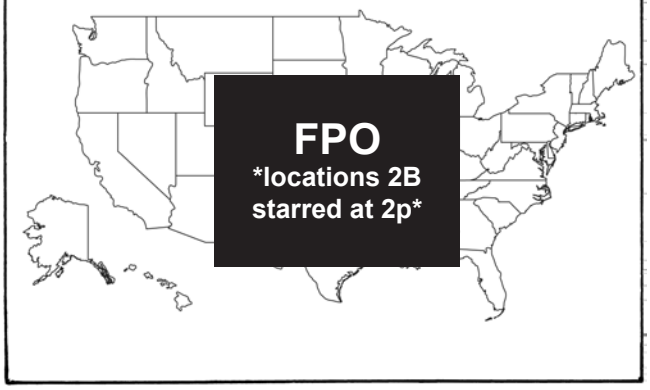
## PLA Gordon M. Conable Award to recognize commitment to intellectual freedom

The Public Library Association's new Gordon M. Conable Award will honor a public library staff member, a library trustee, or a public library that has demonstrated a commitment to intellectual freedom and the *Library Bill of Rights*. The award consists of a $1,500 check and a commemorative plaque from the sponsor, Library Systems and Support, LLC (LSSI).

The recipient of the Gordon M. Conable Award must have demonstrated a commitment to intellectual freedom and the *Library Bill of Rights* in various ways, including, but not limited to, the following: developed and promoted collections that include diverse points of view; provided programs that promote community dialog on controversial issues; created and nurtured an organizational climate that fosters an understanding of the *Library Bill of Rights* among the library staff, library board, and elected and appointed officials; initiated activities at the local, state, or national level that promote, support, or defend intellectual freedom, the *Library Bill of Rights*, or the First Amendment; guaranteed open access to library materials and services for children and young adults; guaranteed open access to electronic information; and defended library materials, programs, or services when confronted with a censorship challenge.

Nominations for the PLA Gordon M. Conable Award can be submitted through PLA's online awards application. The deadline for nominations is December 1, 2006. For more information, contact the PLA office at 1-800-545-2433, ext. 5PLA, or visit PLA's Web site at www.pla.org. PLA is a division of the American Library Association.

## censorship dateline




## libraries

**Lake Los Angeles, California**

Wilsona School District trustees removed ten books from lists submitted by Vista San Gabriel and Wilsona elementary schools and sent them back to be re-evaluated in light of new book selection guidelines. The guidelines were adopted this summer following the board's controversial decision in February to remove twenty-three books, including the latest Harry Potter, from a list recommended for Vista San Gabriel's library.

"They approved a lot of books. They did select a few not to approve," Superintendent Ned McNabb said. "All the ones not approved, we sent them back to be reviewed by the committees again."

The ten books were not approved at the August 17 meeting, three from Vista San Gabriel's list, and seven from Wilsona's. The three struck from Vista San Gabriel's list were *The Burning (Guardians of Ga'hoole, Book 6)*, a fantasy story about the owl world; *The Eye of the Warlock*, which a school committee member described as a "fractured version" of Hansel and Gretel; and *Becoming Naomi Leon*, about a girl finding her heritage while overcoming abandonment, anxiety and disappointment.

The Vista San Gabriel book committee on its own pulled four books from its list so they can be re-reviewed. They were *Harry Potter and the Half-Blood Prince*, *Artemis Fowl: The Eternity Code*, and two other books from the Artemis Fowl series, whose namesake character was described in reviews as a boy-genius anti-hero and criminal mastermind.

The seven taken off Wilsona's list were *The Eternity Code* and six books from a series about the holidays Christmas, Easter, Halloween, Hanukkah, Kwanzaa and Thanksgiving.

"(Board president) Sharon Toyne wanted to make sure that these books were properly depicting those holidays," McNabb said.

The board reasoned that *The Eternity Code* should be taken off Wilsona's list since the same was done at Vista San Gabriel, McNabb said. As for the *Ga'hoole*, *Warlock*, and *Naomi Leon* books, "they just felt that they hadn't been sufficiently reviewed," McNabb said.

Those three books, plus the *Harry Potter* and two of the Artemis Fowl books, were among the 23 that were removed by the board February 16 from a list of 68 that had been recommended by a parent-teacher committee for the Vista San Gabriel Elementary School library.

Trustees said one rejected book contained an unsavory hero who was a bad role model for children; another was about a warlock, which they said was inappropriate; and others were books with which they were unfamiliar and didn't know whether they promoted good character or conflicted with textbooks. Other titles rejected in February included three bilingual Clifford the Big Red Dog books and *Disney's Christmas Storybook*.

At a March board meeting, trustees indicated that the Clifford and Disney books were not objectionable but had been lumped in with the rejected books. The Clifford and Disney books were approved at the August 17 meeting.

Evaluating books can be subjective, as seen in the differing opinions of two trustees on a set of books on the Wilsona list, according to the book committee minutes. Trustee Marlene Olivares felt the subject matter of four *Cartoon History of the Earth* books "was more for seventh grade" and suggested the books be donated to Challenger Middle School. Board member Linda Poirier, however, felt the books were aimed at younger students and "probably wouldn't get circulation at" Challenger, the minutes said.

The new book-selection guidelines, which were approved June 22, were developed by a committee consisting of McNabb, Toyne, and trustee Patricia Greene. Under the guidelines, books now cannot depict drinking alcohol, smoking, drugs, sex, including "negative sexuality," implied or explicit nudity, cursing, violent crime or weapons, gambling, foul humor and "dark content." In some instances, an occasional inappropriate word may be whited-out rather than rejecting the entire book, the policy said.

"Materials must not encourage students to identify with violent or amoral characters. In some cases, students don't always finish the entire book so, for example, we might choose to avoid a story that seems sympathetic to negative

behavior in the beginning even when the lesson is learned in the end," the policy said.

The book policy also states that library materials must be age-appropriate, taking into consideration the different maturity levels of district students who range in age from five to fourteen. "For example, most of our elementary students are not dealing with issues of puberty and we do not want to encourage them to try to identify with characters that are," the policy said. "However, even at the middle school level, there can be a wide range of maturity. Materials for the middle school level should therefore be selected with appropriate limits in mind. An example: romance stories are out—puppy love is OK." Reported in: *Los Angeles Daily News*, August 26.

**San Luis Obispo, California**

The San Luis Obispo county library director ordered librarians to remove the August edition of *HopeDance* magazine from library shelves because the issue is "dedicated to sex," features local artist Mark Bryan's painting of a nude woman on its cover, and has sexual graphics inside.

*HopeDance*, which calls itself a progressive or green magazine that has been publishing ten years, routinely goes to libraries' shelves with other free publications. But in a July 13 letter to librarians, library Director Brian Reynolds wrote that he is "not comfortable having this particular issue" on the free shelves. He asked librarians at the county's fifteen branches to recycle it. "Take a look at it, as well, and you'll see why I am concerned," Reynolds wrote.

The free bimonthly publication has the painting "Venus and the Burning Temples" on its front page and headlines promoting stories inside devoted to "Public Masturbators," "Female Sexual Dysfunctions?" "Pornography: Beyond Right & Wrong," and other subjects related to sexuality.

Deborah Graf, acting assistant library director, called the issue "fairly sexually explicit" and said it went against the library's desire to be family-oriented. She said some parents had complained. Graf said she did not know how many librarians simply put the magazine out of public view and how many destroyed it.

That's a number *HopeDance* publisher Bob Banner would like to have, because he said he will sue the county for removing the magazine. He said it costs money to print and distribute, and when copies are destroyed not only does he lose money but advertisers suffer. Banner said Reynolds could have called and asked him to remove the issue. The publisher distributes 12,000 to 15,000 copies of each issue in four counties and could have put the library copies elsewhere, he said.

Banner said he spoke to Reynolds, who told him he was worried about adolescents' reactions to the magazine. But, Banner said, much of the *HopeDance* information that makes Reynolds uncomfortable can be found in materials already on shelves at the library.

Banner said he has long wanted to do an issue about sexuality. In his introduction, he writes that the August edition is "packed with articles that are fresh, disturbing, funny, probing at the unusual, and alive with what it means to have a body embedded with desire and spiritual yearning dancing together in its beautiful chorus called humanity."

He said *HopeDance's* underlying theme is sustaining the planet, adding that its audience may be people who are upset with what is happening in the world, or looking for something different than what the mainstream media provide. Reported in: *San Luis Obispo Tribune*, August 19.

**Miami, Florida**

For the second time in as many months, a picture book about life in Cuba has been banned by the Miami-Dade County Public Schools. A reconsideration committee voted in mid-August to remove *Cuban Kids*, by George Ancona, from the media center at the Christina Eve Elementary School.

The committee was formed to review the challenge of area resident Dalila Rodriguez, even though her children do not attend the school. Rodriguez objected to photos in the book of a child with a rifle and children saluting the Cuban flag with the caption, "We will be like Che!" "It's not that we want the book to be burned," she said. "If you want it in Barnes and Noble and somebody wants to buy it, fine. But don't make it available to an eight- or nine-year-old child."

Howard Simon, executive director of the American Civil Liberties Union of Florida, characterized the book's removal as "a glimpse of what the future is going to be like unless the courts put a stop to this growing book-banning cancer in Miami-Dade County," referring to the July injunction his organization won against *A Visit to Cuba* and twenty-three other titles in the same series getting pulled off district library shelves pending a hearing this fall. The board, whose chair Agustín Barrera is up for reelection September 5 against adamant anti-Visit to Cuba candidate Manny Anon, voted August 22 to appeal the injunction even though no permanent ruling has yet been made in the case.

In granting a preliminary injunction in July against the removal, Judge Alan S. Gold of U.S. District Court in Miami characterized the matter as a "First Amendment issue" and ruled in favor of the American Civil Liberties Union of Florida, which argued that the books were generally factual and that the board should add to its collection, rather than removing books it disagreed with. After the vote to appeal, Brandon Hensler, a spokesman for the ACLU said the school board was "deciding to continue its senseless litigation and to waste taxpayer dollars that could be used to buy new books." Reported in: *American Libraries* online, September 1; *New York Times*, August 24.

**Loganville, Georgia**

A woman who maintains that the Harry Potter books are an attempt to teach children witchcraft is pushing for the second time to have them banned from school libraries. Laura Mallory, a mother of four from the Atlanta suburb of Loganville, told a Georgia Board of Education officer that the books by British author J. K. Rowling, sought to indoctrinate children as Wiccans, or practitioners of religious witchcraft.

Referring to the recent rash of deadly assaults at schools, Mallory said books that promote evil—as she claims the Potter ones do—help foster the kind of culture where school shootings happen. That would not happen if students instead read the Bible, Mallory said. She added that the books were harmful to children who are unable to differentiate between reality and fantasy.

The children, she said, try to imitate Harry Potter and cast spells on classmates. "They're not educationally suitable and have been shown to be harmful to some kids," Mallory said. She argued that teachers do not assign other religious books like the Bible as student reading.

It was Mallory's second public campaign against the popular fiction series, after trying to get her son's elementary school to ban the books in August 2005. Victoria Sweeny, an attorney representing the Gwinnett County Board of Education in Atlanta's eastern suburbs, which had ruled against her in May, said that if schools were to remove all books containing reference to witches, they would have to ban mainstays like *Macbeth* and *Cinderella*.

"There's a mountain of evidence for keeping Harry Potter," she said, adding that the books don't support any particular religion but present instead universal themes of friendship and overcoming adversity. Sweeny said parents, teachers and scholars have found them a good tool to stimulate children's imagination and encourage them to read.

The hearing officer presiding over the appeal will make a recommendation to the state board, which will then decide the case at its meeting in December. Mallory is appealing after the Gwinnett County school board ruled in favor of the books. Reported in: Associated Press, October 5.

**Marshall, Missouri**

A crowd of concerned citizens filled to overflowing the Marshall City Council chamber to discuss local resident Louise Mills's challenge of two graphic-novel titles in the Marshall Public Library collection: *Fun Home: A Family Tragicomic*, by Alison Bechdel, and *Blankets*, by Craig Thompson. "My concern does not lie with the content of the novels, rather my concern is with the illustrations and their availability to children and the community," Mills told the library board, which called the October 4 meeting, citing sexually explicit drawings in the two coming-of-age books.

Mills explained that her concern centered on children stumbling onto the explicit illustrations after being attracted to the comic-book style of the titles. With photocopies of some of the images projected onto the meeting-room walls, Mills cautioned that collecting such material would lead to the library's eventually drawing the same clientele as "the porn shop down at the junction."

The majority of some twenty citizens who spoke seemed to back Mills. "I don't want seedy people coming into the library and moving into our community," local resident Sarah Aulgur remarked. "If it shouldn't be on a billboard on I-70, it shouldn't be in a public library," agreed Mark Lockhart.

However, area resident Claudia Milstead thanked the library for acquiring the Bechdel and Thompson works. "I hope that you will find a way to keep the two books without offending the people who have expressed what I think are some very heartfelt concerns," she said. Jeani Wilson also supported having a diversity of materials, saying "If you have only things that you like in a library then it is a private library."

Board chair Anita Wright, who said the gathering was "what America is all about, to have a hearing to listen to views" wrapped up the two-hour session by assuring attendees that trustees "listened to every word, we are open-minded, we do care, and we want the library to be the best that it can be." Reported in: *American Libraries* online, October 6.

**Lewisburg, Tennessee**

People who spoke at the Lewis County Memorial Library board meeting in September objected to the purchase of children's books in Spanish. "It should not be paid for by the taxpayer's money of Marshall County," said Robin Minor, a social studies teacher at Lewisburg Middle School. "I do think we have a lot of county commissioners that will be interested and, again, if it's one penny, it's one penny too much."

When asked how much of the library's $13,000 book purchasing budget went to buy foreign-language books, objectors were told about $130. When board members pointed out there were also books in Japanese, Russian, Polish and French available to the library, protesters said they shouldn't be there, either. The library does not plan to change its policy on foreign language books, library board chair John Rawe said. Reported in: *Knoxville News-Sentinel*, September 29.

**Brazoria, Texas**

Officials of the Columbia-Brazoria Independent School District removed two books from the West Brazos Junior High library in Brazoria following two unrelated complaints within a month's time. Assistant Superintendent

Martha Buckner said the library no longer carried Ursula LeGuin's *A Fisherman of the Inland Sea* nor *Zero to Sixty: The Motorcycle Journey of a Lifetime*, by Gary Paulsen.

Linda Nall, who revealed herself as the complainant in a September 25 letter to the *Brazosport Facts* newspaper, wrote that she had objected August 29 to a novel that "had the F-word 13 times in the first chapter." At the September 19 meeting, parent Monte Hurley voiced a separate objection to depictions of sex acts and profanity in *Zero to Sixty*, which his 12-year-old had borrowed. "I understand that my children hear this stuff in the public, and they'll hear it in school, I'm sure, but I don't want my tax dollars to teach it to my children," Hurley said.

Buckner said district officials decided to temporarily bar students from borrowing any books while a team of four district librarians reviewed all the fiction in the junior-high library collection. The process took three days, and "no other books were identified as inappropriate for the students served at the middle school," she said. The checkout moratorium was lifted September 28, after the librarians created a restricted "young adult" section from which students can borrow only with written parental permission.

Asserting that "our district took a proactive stance with regards to our recent book challenges," Buckner emphasized that, contrary to local media reports, "at no time were our libraries closed to students in this district." Superintendent Carol Bertholf also sought to clear the air, writing parents September 29 that "human error" caused the challenged books to enter the collection and that books dealing with subjects "that some parents may consider 'sensitive' topics such as death, suicide, physical or sexual abuse, and teenage dating relationships" have been moved to the restricted collection at the junior high school as well as at two elementary schools where 6th-graders are among the media-center patrons.

The letter went on to remind parents that some school-library books "may still contain words that are considered insensitive or profane, but the context of the book and the literary importance of the book is its true message." Reported in: *American Libraries* online, September 29.

## schools

**Mobile, Alabama**

After receiving complaints from parents and grandparents, Mobile County school board member Fleet Belle said he wants *The Learning Tree* removed from a list of books that some students are required to read during the summer. The coming-of-age book, written in 1963 by acclaimed author Gordon Parks, was on this summer's reading list for upcoming ninth-graders at LeFlore High School in Mobile's Toulminville community.

Belle, who has read excerpts from the book, said he wants to make sure this is the last class of students to read it. "The language is inappropriate and unacceptable," Belle said. "This book should not have ever been on the reading list for our fine children in the Mobile County Public School System. I take exception to that."

There are three sex scenes in the book's first twenty-five pages. The author frequently used words that included "nigga," "bitch," "bastard" and "ass."

Belle brought the matter up for discussion at the last school board meeting. Lee Taylor, assistant superintendent for curriculum, told Belle that she had looked into the situation and that the book does seem inappropriate for ninth-graders. She added that the language was "very offensive."

"We could put a lot of other good books in their hands that don't have that offensive language," she said, adding that the book will be pulled. Taylor said the school system requires that certain books be read in specific grades. Teachers decide on the remaining books to assign. *The Learning Tree* was assigned by a teacher at LeFlore, officials said.

Stuart Applebaum, chief spokesman for Random House, Inc., which oversees the book's publisher, Ballantine Books, defended *The Learning Tree* as a classic work of literature by a respected author. "We very proudly publish it, and we stand by the book as an important reading experience," Applebaum said.

When Parks adapted *The Learning Tree* into a movie in 1969, he became the first black person to direct a major motion picture. Parks was also a well-known photographer for *Life* magazine. He died in March at the age of 93.

The cover of *The Learning Tree* states that the book is about "How it feels to be black in the white man's world." The plot is somewhat autobiographical, with the main character, Newt, facing prejudice and other hardships in rural Kansas in the 1920s.

"Removing *The Learning Tree* from school reading lists would be a terrible thing because it might demotivate many prospective readers from enjoying and being inspired by a classic coming-of-age memoir," Applebaum said. "The book has been a nurturing and compelling reading experience for generations of readers, young and old." Reported in: *Mobile Press-Register*, August 26.

**Tampa, Florida**

References to breasts and suicide prompted Hillsborough County school administrators to yank two books from a fourth-grade reading list. Parents and teachers "inundated" the district with complaints about the books, one administrator wrote in a letter to schools. The titles appeared on a state-recommended reading list for elementary school students.

*My Brother's Hero* and *Lily's Ghosts* are on the Sunshine

State Young Reader's Award list of books for third- through fifth-graders, but both are more suitable for students of middle school age, said Barbara Rooks, the school district's supervisor of elementary media centers.

The Hillsborough, Pinellas and Pasco county school districts urge fourth-graders to read the Sunshine State books and later quiz them on their knowledge in Battle of the Books competitions. In Hillsborough, school teams compete in a final challenge of their familiarity with the books at the end of the school year.

The Pinellas school district also removed *Lily's Ghosts* from its Battle of the Books program, as well as *Attack of the Mutant Underwear*, because officials found them unsuitable for younger readers.

The news of Hillsborough's decision surprised some parents who never questioned the selection on the statewide reading lists before. "I kind of trusted that they would use good judgment and choose books that were appropriate for that age group," Annette Doyle, whose fourth-grade daughter attends Deer Park Elementary in Tampa, said.

Rooks, who said she started receiving complaints in August, said the books will remain in elementary school library collections but are not required reading, and teachers are discouraged from reading them aloud in class. The district never before removed a Sunshine State title from any of its programs, Rooks said. The Florida reading list is compiled by representatives of the state School Library Media Services Office and the Florida Association for Media in Education.

*My Brother's Hero*, by Tallahassee-based author Adrian Fogelin, is a story narrated by an eighth-grade boy and referred to as a "humorous portrait of adolescence" by its publisher, Peachtree. The young boy searches for adventure in the Florida Keys. In one passage, he is in a bar searching for a friend's father and finds a woman "with half her boobs showing." The passage generated at least one e-mailed complaint from a Hillsborough County parent to the author, Fogelin said. But even Fogelin said she and her publisher questioned why the title was not placed on the Florida list recommended for students in grades six through eight.

"I really intended it for middle school," said Fogelin. Most third- and fourth-graders would not understand its content, she said. Nevertheless, she was troubled by the Hillsborough school district's decision because some younger readers may be mature enough to enjoy the book.

Rooks referred to no particular passage in *Lily's Ghosts* that she considered questionable. "I would not remove a book for just one word," she said, saying only that the book was better for older readers. The novel, written by Laura Ruby, concerns a girl who visits a haunted house, grows frustrated with her elders while researching her family history and shares adventures with a young boy. *Publishers Weekly* described a tale that includes "family secrets that touch on arson, suicide and murder" and an "unsettling" turn of events.

*Lily's Ghosts* also appears on the Sunshine State list for readers in grades six through eight. Rooks said that district administrators will raise their concerns about the Sunshine State selections with state library officials.

School librarians throughout Florida nominate books for consideration. Then a committee of librarians and state library officials compiles the final list. In previous years, school districts rejected books from the Sunshine State list because of concerns similar to those raised in Hillsborough, said Pam Stewart, the state's deputy education chancellor for education quality. "I would encourage every district to make the decision they feel is appropriate," she said. Reported in: *Tampa Tribune*, September 16.

**Webster, New York**

Webster Central School District officials removed a gay-themed book from a summer reading list for high school students after receiving complaints from parents. The book, *Rainbow Boys*, by Alex Sanchez, which was released in 2001, is about gay teen life. It won the International Reading Association's 2003 Young Adults' Choice award, and the American Library Association selected it as a Best Book for Young Adults.

"Parents know that it's our job to look out for their children and I think parents trust the Webster school district that we would always have their children's interests first in mind," said Ellen Agostinelli, Webster's assistant superintendent for curriculum and instruction.

Agostinelli said she got some telephone calls from parents complaining about the book but would not say how many. She said district officials are just starting a review of the reading list of about two hundred books and she decided to pull the book until the entire list could be reviewed.

"I read it and I have some questions about it, as well," Agostinelli said. The gay theme was not one of her concerns, but Agostinelli declined to say what was. "I'm not going to get into this," she said.

This was the second year students in middle and high school have been required to read two books from the list during the summer and submit reports when they return to school. The book list was created by school librarians and English teachers. Agostinelli said it has not been decided if any public meetings will be scheduled for discussions of the topic.

*Rainbow Boys* was not removed from the district's libraries. But Ove Overmyer, a library assistant at the Rochester Public Library, was concerned that purging a book from a reading list is a precursor to having it taken from the shelves. "It starts with book challenges and then they'll ask to have the book removed. We've seen this process before all over the country, especially when it deals with gay-oriented literature. It's censorship plain and simple, and there's no place for it in the school district or in the public library system," Overmyer said.

Kris Hinesley, executive director of the Gay Alliance of the Genesee Valley, said "It's important for youth to have this story available to them whether or not they choose to read it." Lesbian, gay, bisexual, and transgender teens are at a much higher risk of committing suicide, she said. "A prevention strategy is to give them positive messages, which you can find in this book," she said. Reported in: *Rochester Democrat and Chronicle*, August 24.

**Frisco, Texas**

"Keep the 'Art' in 'Smart' and 'Heart,'" Sydney McGee had posted on her Web site at Wilma Fisher Elementary School in this moneyed boomtown that is gobbling up the farm fields north of Dallas. But McGee, a popular art teacher with 28 years in the classroom, is out of a job after leading her fifth-grade classes last April through the Dallas Museum of Art. One of her students saw nude art in the museum, and after the child's parent complained, the teacher was suspended.

Although the tour had been approved by the principal, and the eighty-nine students were accompanied by four other teachers, at least twelve parents and a museum docent, McGee said, she was called to the principal the next day and "bashed." She later received a memorandum in which the principal, Nancy Lawson, wrote: "During a study trip that you planned for fifth graders, students were exposed to nude statues and other nude art representations." It cited additional complaints, which McGee has challenged.

The school board suspended her with pay on September 22.

In a newsletter e-mailed to parents, the principal and Rick Reedy, superintendent of the Frisco Independent School District, said that McGee had been denied transfer to another school in the district, that her annual contract would not be renewed and that a replacement had been interviewed.

The episode dumbfounded and exasperated many in and out of this mushrooming exurb, where nearly two dozen new schools have been built in the last decade and computers outnumber students three to one. A representative of the Texas State Teachers Association, which has sprung to McGee's defense, called it "the first 'nudity-in-a-museum case' we have seen."

"Teachers get in trouble for a variety of reasons," said the association's general counsel, Kevin Lungwitz, "but I've never heard of a teacher getting in trouble for taking her kiddoes on an approved trip to an art museum."

John R. Lane, director of the museum, said he had no information on why McGee had been disciplined. "I think you can walk into the Dallas Museum of Art and see nothing that would cause concern," Lane said.

Over the past decade, more than half a million students, including about a thousand from other Frisco schools, have toured the museum's collection of twenty-six thousand works spanning five thousand years, he said, "without a single complaint."

The uproar swamped Frisco school switchboards and prompted some Dallas-area television stations to broadcast images of statues from the museum with areas of the anatomy blacked out.

In the May 18 memorandum to McGee, Lawson faulted her for not displaying enough student art and for "wearing flip-flops" to work; McGee said she was wearing Via Spiga brand sandals. In citing the students' exposure to nude art, Lawson also said "time was not used wisely for learning during the trip," adding that parents and teachers had complained and that McGee should have toured the route by herself first. But McGee said she did exactly that.

"This is not about a field trip to a museum," the principal and superintendent told parents in their e-mail message, citing "performance concerns" and other criticisms of McGee's work, which she disputes. "The timing of circumstances has allowed the teacher to wave that banner and it has played well in the media," they wrote.

They took issue with McGee's planning of the outing. "No teacher's job status, however, would be jeopardized based on students' incidental viewing of nude art," they wrote.

McGee and her lawyer, Rogge Dunn, who are exploring legal action, say that her past job evaluations had been consistently superior until the museum trip and only turned negative afterward. They have copies of evaluations that bear out the assertion.

Retracing her route through the museum's European and contemporary galleries, McGee passed the marble torso of a Greek youth from a funerary relief, circa 330 B.C.; its label reads, "his nude body has the radiant purity of an athlete in his prime." She passed sculptor Auguste Rodin's tormented "Shade;" Aristide Maillol's "Flora," with her clingy sheer garment; and Jean Arp's "Star in a Dream." None, McGee said, seemed offensive.

"This is very painful and getting more so," she said, her eyes moistening. "I'm so into art. I look at it for its value, what each civilization has left behind."

School officials have not named the child who complained or any particular artwork at issue, although McGee said her puzzlement was compounded when Lawson referred at times to "an abstract nude sculpture."

McGee, a fifth-generation Texan who has a grown daughter, won a monthly teacher award in 2004 from a local newspaper. She said the loss of her $57,600-a-year job could jeopardize her mortgage and compound her health problems, including a heart ailment.

Some parents have come to McGee's defense. Joan Grande said her eleven-year-old daughter, Olivia, attended the museum tour. "She enjoyed the day very much," Grande said. "She did mention some nude art but she didn't make a big deal of it and neither did I." She said that if McGee's

job ratings were high before the incident, "something isn't right" about the suspension.

Another parent, Maijken Kozcara, said McGee had taught her children effectively. "I thought she was the greatest," Kozcara said. But "knowing Texas, the way things work here" she said of the teacher's suspension, "I wasn't really amazed. I was like, 'Yeah, right.'" Reported in: *New York Times*, September 30.

**Conroe, Texas**

A Caney Creek High School father is fired up because the Conroe Independent School District uses the book *Fahrenheit 451*, by Ray Bradbury, as classroom reading material. Alton Verm, of Conroe, objects to the language and content in the book. His fifteen-year-old daughter Diana, a sophomore, came to him September 21 with her reservations about reading the book because of its language.

"The book had a bunch of very bad language in it," Diana Verm said. "It shouldn't be in there because it's offending people. . . . If they can't find a book that uses clean words, they shouldn't have a book at all."

Alton Verm filed a "Request for Reconsideration of Instructional Materials" with the district regarding *Fahrenheit 451*, which was published in 1953. He wants the district to remove the book from the curriculum.

"It's just all kinds of filth," said Alton Verm, adding that he had not read the book. "The words don't need to be brought out in class. I want to get the book taken out of the class." He looked through the book and found the following things wrong with the book: discussion of being drunk, smoking cigarettes, violence, "dirty talk," references to the Bible and using God's name in vain. He said the book's material goes against his religious beliefs.

Verm said he doesn't understand how the district can punish students for using bad language, yet require them to read a book with bad language as part of a class.

Diana Verm and another classmate decided to read an alternative book. They leave the classroom when the class reads or discusses *Fahrenheit 451*, she said. The two students were given *Ella Minnow Pea*, by Mark Dunn, because it shares common themes with *Fahrenheit 451*, said Chris Hines, CISD assistant superintendent for secondary education.

*Fahrenheit 451* is science fiction that poses a warning about the preservation and passing on of knowledge as well as asks whether the government should do the thinking for the people, Hines stated. Other themes include conformity vs. individuality, freedom of speech and the consequences of losing it, the importance of remembering and understanding history and technology as help to humans and as hindrances to humans, Hines stated.

"They're not reading books just to read them," Hines said in a telephone interview. "They're reading it for a purpose. . . . We respect people's rights to express their concerns and we have a policy in place to handle that."

A selection process is used for materials other than textbooks, according to district policy. The materials must meet various standards, be appropriate for the subject, age, and social and emotional development of the students and motivate students to examine their own attitudes and behavior, according to district policy.

Verm's request came during the twenty-fifth annual Banned Books Week. He and Hines said the request to ban *Fahrenheit 451*, a book about book burning, during Banned Books Weeks was a coincidence. Reported in: *Montgomery County Courier*, October 1.

**Harrisonburg, Virginia**

A display at Harrisonburg High School of books that have, at some point in history, either been banned or challenged was ordered removed September 27 by Harrisonburg Schools Superintendent Donald Ford. The display was part of the American Library Association's annual Banned Books Week, the last week of September. Ford said he was concerned the school would encourage students to read banned books because they are on a controversial list and not because of their content.

The high school library has participated in at least the past two Banned Books Week, said librarian Elsie Garber, who is in her third year at the library. Garber would not comment on the display, other than to say it included several books. School administrators would not release a complete list of the books in the display.

However, High School Principal Irene Reynolds recalled that the titles included *The Adventures of Tom Sawyer* and *The Adventures of Huckleberry Finn*, by Mark Twain; *Fahrenheit 451*, by Ray Bradbury; *The Diary of Ann Frank*, and The Bible.

The American Library Association has held Banned Books Week since 1982.

The high school library display, Ford said, seemed to entice students into reading the books because they are on a list. "We are not going to send a message to kids encouraging them to read 'banned' books. Our message should be to read books, a wide variety of books. But I don't think we should tease kids into reading a book by trying to say, 'there might be something juicy or controversial in this book. Therefore, it would be a good one for you to sneak home and read."'

That is not the message, Ford said, that he believed librarians were trying to send with the display. "I don't believe there's a significant difference in what they wanted to accomplish, and what I want to accomplish in terms of our libraries and reading," he said. Reported in: *Daily News Record*, October 4.

## student press

**St. Augustine, Florida**

The president of Flagler College said the headline on the front page of the school paper was wrong. So he had all of the newspapers pulled from the Saint Augustine campus. Dr. William Abare, Jr., said a fact error forced him to remove the papers. Some at the school didn't see it that way. They said the problem pitted the school administration against the First Amendment.

The front page of *The Gargoyle* September 20 had an article dealing with the school's financial situation. The offending headline read "Campus Growth Forces Tuition Hike."

Abare claimed the paper is funded and governed by the college, which gives him the right to remove it. He said he didn't want prospective students to read the inaccurate article. Flagler journalism professor Rob Armstrong and the student who wrote the article, Kimberly Hosey, agreed the president's actions violated the First Amendment. They said the president considers the paper to be nothing more than a public relations tool of the college. Abare said he did nothing wrong and would do it again. Reported in: Cox.Net Central Florida, September 22.

## foreign

**Melbourne, Australia**

Fearing that federal authorities could press charges under the Australian Anti-Terrorism Act of 2005, the University of Melbourne has removed three books on Islamic jihad by Abdullah Azzam from open shelves in the Baillieu Library. Two of the books—*Defence of the Muslim Lands* and *Join the Caravan*—were banned from importation by a federal review board in July, which found them liable to incite acts of terrorism and martyrdom.

A Melbourne honors student who requested access to one of the books was refused permission to borrow or consult it. However, Australian Attorney General Philip Ruddock said researchers and faculty could still refer to works of extremist ideology as long as there was no intent to urge the use of violence. "We would hope [that faculty] would be responsible and lecture on the basis that these books have been refused classification," a spokesman for Ruddock said.

Other Australian universities are considering limiting access to the books as well. Reported in: *American Libraries* online, September 15.

**New Delhi, India**

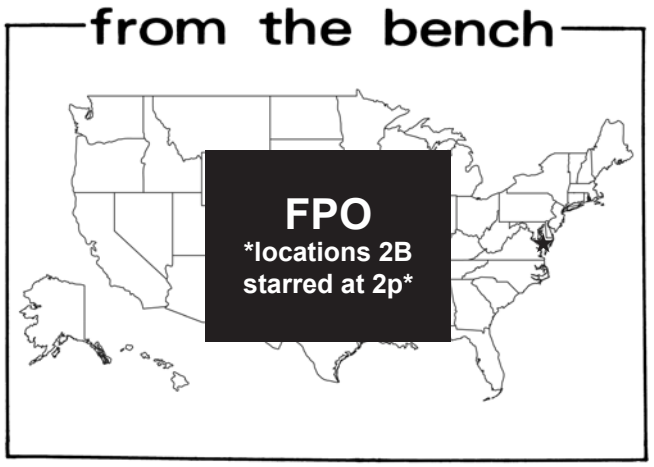
The Supreme Court of India was petitioned August 24 for a directive to stop the distribution of textbooks containing several 'offending' remarks on the Hindu religion, Jats and Scheduled Castes.

The Shiksha Bachao Andolan Samiti, Delhi Pradesh Citizens Council and Bijender Singh Lather said they were filing the petition to ensure that value-based education did not remain confined to reports of committees and commissions and was actually brought into effect.

They said that the Class 11 Hindi textbook used certain phrases that were hurting the sentiments of the Scheduled Castes and Scheduled Tribes. Similarly, there was a passage in it that hurt Hindu sentiments. In the Class 12 history textbook, certain derogatory references had been made against Jats, the petition said.

The textbooks, published by the National Council for Education, Research and Training (NCERT), included numerous unwarranted and factually incorrect statements, it said. The Samiti said it had made several representations to the NCERT for removal of the objectionable material but to no avail.

The petition said some expressions and remarks were unconstitutional and in violation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The petitioners sought a direction to the respondents to delete the offending phrases and to take action against the writers concerned. An interim direction to stop distribution of the textbooks till the passages were deleted was also sought. Reported in: India E-News, August 24.




## library

**Antioch, California**

Contra Costa County did not intrude on religious freedom when it barred a church from holding prayer services in a meeting room of the Antioch library, a federal appeals court ruled September 20 in a case that drew arguments from the Bush administration in support of the church.

In a 2–1 decision, the U.S. Court of Appeals for the Ninth Circuit in San Francisco said that the Faith Center Church Evangelistic Ministries had the right to hold religious discussions in a room that was open to other community groups, but that the county could prohibit it from conducting worship services.

"The county has a legitimate interest in . . . excluding meeting room activities that may interfere with the library's primary function as a sanctuary for reading, writing and quiet contemplation," and in preventing the room from being "transformed into an occasional house of worship," Judge Richard Paez said in the majority opinion.

Judge Paez acknowledged that there may be little difference between prayer services and other types of meetings by religious groups in some cases, and said judges and government agencies are not competent to make such distinctions. But in this case, Paez said, Faith Center itself described its planned library gathering as one for "praise and worship."

Judge Richard Tallman stressed the same issue in his dissenting opinion. "Separating religious worship from other religious speech inevitably leads to state entanglement in religion" and is beyond the government's authority, he said.

U.S. District Court Judge Lawrence Karlton of Sacramento, temporarily assigned to the appeals court, cast the deciding vote for the county. He wrote a separate opinion saying the "sorry state of the law" was due to Supreme Court rulings that have weakened the separation of church and state by blurring the distinction between "religious practice and secular speech."

The Bush administration entered the case on the side of the church, arguing last fall that barring worship services, while allowing social and political groups to meet at the library, would violate the religious group's freedom of expression.

"Religious worship is also communicative," the Justice Department said in its brief. "Hymns and prayers are expressions among believers, and to observers, of their common faith."

A lawyer for Faith Center said he would appeal the ruling. "The effect of this decision is to treat Christians and all religious people, who might want to worship in an otherwise public meeting room in a public library, as second-class citizens," said attorney Gary McCaleb of the Alliance Defense Fund.

But Deputy County Counsel Kelly Flanagan said the county was concerned that allowing prayer services in a public building would amount to an unconstitutional government endorsement of religion. "We think a library and a church are different things and should stay different," Flanagan said.

Meeting rooms at the Antioch library have been used by community and political groups, including the Sierra Club and a local Democratic Party chapter. The county initially banned all religious activities in the rooms, but, after Faith Center filed suit, modified the exclusion in December 2004 to prohibit only religious services. Faith Center held a general meeting and a prayer service at the Antioch library in May 2004, but library officials denied permission for the church to hold another service two months later. A federal judge issued an injunction against the county's policy in May 2005, saying it was probably unconstitutional, but no further prayer meetings were held during the appeal. Reported in: *San Francisco Chronicle*, September 21.

## wiretapping

**San Francisco, California**

A panel of judges has consolidated seventeen lawsuits that allege that telecommunications carriers participated in a secret, government-sponsored wiretapping program.

The Judicial Panel on Multidistrict Litigation ruled in August that all seventeen cases across the U.S. should be heard by Judge Vaughn R. Walker of the U.S. District Court

for the Northern District of California. Walker is presiding over a class-action lawsuit against AT&T Inc., filed by civil liberties group the Electronic Frontier Foundation (EFF).

The EFF filed notice of the transfer order with Walker August 10. The order moves cases from New York, Texas, Illinois, Rhode Island, Montana, Louisiana, Oregon, Tennessee and other California jurisdictions to Walker's court.

Walker, on July 20, denied motions by the U.S. government and AT&T to dismiss the case. In August, the Department of Justice filed a new motion to dismiss the lawsuit, saying the case involved "particularly sensitive national security interests."

On August 8, Walker delayed the case pending a consolidation decision. The EFF asked Walker to allow the case to move forward now that the jurisdictional issues have been resolved AT&T and the DOJ asked the judge's panel to consolidate the cases to a Washington court, as did Verizon Communications, Inc., and BellSouth Corp., which are defendants in some of the lawsuits. Verizon and BellSouth have both denied participation in a National Security Agency wiretap program. But no case is pending in U.S. District Court for the District of Columbia, the judges panel said.

The judges panel decided Walker's court was the best place to move the cases because it's where the case was first filed. "Significantly more advanced action is pending before a judge already well versed in the issues," the panel's order said. Reported in: *Computerworld*, August 11.

**Detroit, Michigan**

A federal judge in Detroit ruled August 17 that the Bush administration's eavesdropping program is illegal and unconstitutional, and she ordered that it cease at once. U.S. District Court Judge Anna Diggs Taylor found that President Bush exceeded his proper authority and the eavesdropping without warrants violated the First and Fourth Amendment protections of free speech and privacy.

"It was never the intent of the Framers to give the president such unfettered control, particularly where his actions blatantly disregard the parameters clearly enumerated in the Bill of Rights," she wrote, in a decision that the White House and Justice Department said they would fight to overturn.

The judge's ruling was the latest chapter in the continuing debate over the proper balance between national security and personal liberty since the attacks of September 11, 2001, which inspired the eavesdropping program and other surveillance measures that the administration says are necessary and constitutional and its critics say are intrusive.

In becoming the first federal judge to declare the eavesdropping program unconstitutional, Judge Taylor rejected the administration's assertion that to defend itself against a lawsuit would force it to divulge information that should be kept secret in the name of national security.

"Predictably, the war on terror of this administration has produced a vast number of cases, in which the states secrets privilege has been invoked," Judge Taylor wrote. She noted that the Supreme Court has held that because the president's power to withhold secrets is so powerful, "it is not to be lightly invoked." She also cited a finding in an earlier case by the Court of Appeals for the District of Columbia Circuit that "whenever possible, sensitive information must be disentangled from nonsensitive information to allow for the release of the latter."

In any event, she said, she is convinced that the administration could defend itself in this case without disclosing state secrets. Judge Taylor's ruling came in a suit filed by the American Civil Liberties Union on behalf of journalists, scholars, lawyers and various nonprofit organizations who argued that the possibility of eavesdropping by the National Security Agency interfered with their work.

Although she ordered an immediate halt to the eavesdropping program, no one who has followed the controversy expects the litigation to end quickly. The White House issued a statement saying "we couldn't disagree more" with Judge Taylor's decision and crediting the surveillance program with saving American lives.

Attorney General Alberto Gonzales said that he was disappointed with the decision, and that "we will continue to utilize the program to ensure that America is safer." Gonzales said he remained confident that the program was constitutional, and that Congress had given the president all the authority he needed when it authorized the use of military force after the attacks.

Earlier, the Justice Department called the surveillance program "a critical tool" against Al Qaeda and said the parties to the suit have agreed to a stay of Judge Taylor's order pending appeal.

Some Republicans voiced disappointment over the ruling, while Democrats praised it. The starkly different reactions signaled more heated debate on Capitol Hill when Congress reconvenes.

But for the moment, the ruling by Judge Taylor caused elation among the plaintiffs. "It's another nail in the coffin of executive unilateralism," said Jameel Jaffer, a lawyer for the plaintiffs with the ACLU. And Anthony Romero, executive director of the ACLU, said Judge Taylor's ruling "confirms that the government has been acting illegally, in contravention of the Foreign Intelligence Surveillance Act and the Fourth Amendment."

The surveillance act was passed by Congress in 1978 in response to disclosures of previous government improprieties in eavesdropping. The act established a secret court to handle applications for surveillance operations, and set up procedures for them to take place while applications for warrants are pending in some limited circumstances and for limited times.

Judge Taylor said "the president has acted, undisputedly, as FISA forbids," thus defying the express will of Congress, and she was unpersuaded by the government's stance that it could not defend itself in the lawsuit without doing the country harm.

"Consequently, the court finds defendants' arguments that they cannot defend this case without the use of classified information to be disingenuous and without merit," she wrote.

The judge, who heard arguments in the case in June, brushed aside several assertions made by lawyers for the National Security Agency. She held that, contrary to the NSA's assertions, the plaintiffs were suffering real harm, and had standing to sue the government.

"Here, plaintiffs are not asserting speculative allegations," she said.

Judge Taylor, appointed by President Jimmy Carter in 1979, did not deal a total defeat to the administration. She dismissed a separate claim by the ACLU over data-mining of telephone records, agreeing that further litigation could indeed jeopardize state secrets.

But over all, Judge Taylor's decision was a rebuke to the administration, as she made clear in closing by quoting Chief Justice Earl Warren's words in a 1967 ruling: "Implicit in the term 'national defense' is the notion of defending those values and ideas which set this nation apart."

Democrats said Judge Taylor saw things the right way. "Today's district court ruling is a strong rebuke of this administration's illegal wiretapping program," said Senator Russell D. Feingold of Wisconsin. "The president must return to the Constitution and follow the statutes passed by Congress. We all want our government to monitor suspected terrorists, but there is no reason for it to break the law to do so."

Representative Ed Markey of Massachusetts, a senior Democrat on the House Homeland Security Committee, said the administration should stop "poking holes in the Constitution" and concentrate on "plugging holes in homeland security."

But Republicans lined up behind the administration. "America cannot stop terrorists while wearing blinders," said House Speaker J. Dennis Hastert. "We stop terrorists by watching them, following them, listening in on their plans, and then arresting them before they can strike. Our terrorist surveillance programs are critical to fighting the war on terror and saved the day by foiling the London terror plot."

Senator Bill Frist of Tennessee, the majority leader, agreed. "We need to strengthen, not weaken, our ability to foil terrorist plots before they can do us harm," he said. "I encourage swift appeal by the government and quick reversal of this unfortunate decision."

Gonzales said he expected that the ruling would play a role in the debate in Congress over how and whether to change federal eavesdropping laws. But he said the exact impact was "hard to predict."

Among competing proposals, Republican leaders have proposed legislation that would specifically permit the wiretapping program. Some Democrats, however, have introduced legislation that would restrict, or in some cases ban altogether, the government from conducting wiretaps on Americans without a warrant.

The White House is backing a plan, drafted by Senator Arlen Specter, Republican of Pennsylvania, with the blessing of President Bush, that would allow a secret court to review the legality of the operation.

But in the view of critics, it could also broaden the president's authority to conduct such operations. Gonzales said it appeared to administration lawyers that the Specter legislation, if passed by Congress, "would address some of the concerns raised by the judge in her opinion."

Another element of the Specter legislation would force other lawsuits over the program—like the one brought by the ACLU in Detroit—to be consolidated into a single action to be heard by the secret court.

Going beyond the arguments offered against the wiretapping program by many legal scholars, Judge Taylor ruled that it violated not only the 1978 law, the Foreign In-telligence Surveillance Act, but also the Fourth Amendment, which prohibits unreasonable searches and seizures.

The Supreme Court has never addressed the question of whether electronic surveillance of partly domestic communication violates the Fourth Amendment. Judge Taylor concluded that the wiretapping program is "obviously in violation of the Fourth Amendment."

The president also violated the Constitution's separation of powers doctrines, Judge Taylor ruled. Neither a September 2001 Congressional authorization to use military force against Al Qaeda nor the president's inherent constitutional powers allow him to violate the 1978 law or the Fourth Amendment, she said.

"There are no hereditary kings in America and no powers not created by the Constitution," she wrote, rejecting what she called the administration's assertion that the president "has been granted the inherent power to violate not only the laws of the Congress but the First and Fourth Amendments of the Constitution itself."

On October 4, an appellate court ruled that the Bush administration can continue eavesdropping on the international communications of some Americans without a court warrant while it appeals Judge Tayor's ruling that the program is unconstitutional

The unanimous ruling from a three-judge panel of the United States Court of Appeals for the Sixth Circuit gave little explanation for the decision. In the three-paragraph ruling, the judges said they considered the likelihood that an appeal would succeed, the potential damage to both sides and the public interest.

The Justice Department had urged the appeals court to allow it to keep the program in place while it argued its appeal, claiming that the nation faced "potential irreparable

harm." The appeal is likely to take months. Reported in: *New York Times*, August 17, 18, October 5.

## secrecy

**Alexandria, Virginia**

In an expansion of the government's authority to regulate public disclosure of national security information, a federal court ruled that even private citizens who do not hold security clearances can be prosecuted for unauthorized receipt and disclosure of classified information.

The August 9 ruling by Judge T.S. Ellis, III, denied a motion to dismiss the case of two former employees of the American Israel Public Affairs Committee (AIPAC) who were charged under the Espionage Act with illegally receiving and transmitting classified information. The decision is a major interpretation of the Espionage Act with implications that extend far beyond this particular case.

The Judge ruled that any First Amendment concerns regarding freedom of speech involving national defense information can be superseded by national security considerations.

"Although the question whether the government's interest in preserving its national defense secrets is sufficient to trump the First Amendment rights of those not in a position of trust with the government [i.e. not holding security clearances] is a more difficult question, and although the authority addressing this issue is sparse, both common sense and the relevant precedent point persuasively to the conclusion that the government can punish those outside of the government for the unauthorized receipt and deliberate retransmission of information relating to the national defense," Judge Ellis wrote.

The provisions of the Espionage Act are not impermissibly overbroad or unconstitutional, the Judge ruled, because they are limited by the requirements that the prohibited behavior be both knowing and willful.

"The government must . . . prove that the person alleged to have violated these provisions knew the [restricted] nature of the information, knew that the person with whom they were communicating was not entitled to the information, and knew that such communication was illegal, but proceeded nonetheless."

"Finally, with respect only to intangible information [as opposed to documents], the government must prove that the defendant had a reason to believe that the disclosure of the information could harm the United States or aid a foreign nation. . . ."

"So construed, the statute is narrowly and sensibly tailored to serve the government's legitimate interest in protecting the national security, and its effect on First Amendment freedoms is neither real nor substantial as judged in relation to this legitimate sweep," Judge Ellis wrote.

Judge Ellis concluded his opinion by noting that the provisions of the Espionage Act "have remained largely unchanged since the administration of William Howard Taft." Technological and other changes over the past century "should suggest to even the most casual observer that the time is ripe for Congress to engage in a thorough review and revision of these provisions to ensure that they reflect both these changes, and contemporary views about the appropriate balance between our nation's security and our citizens' ability to engage in public debate about the United States' conduct in the society of nations."

The case has produced alarm among the policy groups, lobbyists and journalists who trade in information, often about national security issues, with officials in the administration and in Congress. Nonetheless, Judge Ellis explicitly rejected the argument that the prosecution was unfairly flawed because this practice goes on regularly in Washington.

Under that argument, it was a violation of due process to single out the pro-Israel lobbyists for behavior that was generally recognized as acceptable in the capital.

The ruling means the case will proceed against the lobbyists, Steven J. Rosen and Keith Weissman, former officials of the American Israel Public Affairs Committee.

Judge Ellis dismissed the defendants' arguments that the indictment limited their First Amendment rights to learn about the way the government operates and use that information to influence policy. The defendants' motion to dismiss, the judge wrote, "exposes the inherent tension between government transparency so essential to a democratic society and the government's equally compelling need to protect from disclosure information that could be used by those who wish this nation harm." But, he added, "the rights protected by the First Amendment must at times yield to the need for national security."

Lawyers for the two lobbyists argued that the eighty-nine-year-old Espionage Act, under which they were charged, was not intended to be used this way. The lawyers argued that even though the language of the law might apply, the application to their clients was so novel that the prosecution violated the well-settled principle that a statute must be clear as to what it prohibits because it would otherwise invite selective prosecution.

Judge Ellis said the applicable test was "whether the language and application of the statute has provided defendants adequate warning that their conduct was proscribed." In this case, the judge said, the "statute's plain language rebuts this argument." The infrequency of a statute's particular application is unimportant, he ruled.

According to the August 2005 indictment, Rosen and Weissman received classified information about the Middle East, Iran and terrorism from a Defense Department analyst, Lawrence A. Franklin. They then passed that information on to a journalist and an Israeli diplomat.

Franklin pleaded guilty and was sentenced to twelve-

and-a-half years in prison. Rosen and Weissman have since been dismissed from the lobbying group, known as AIPAC. Reported in: *Secrecy News*, August 10; *New York Times*, August 11.

## colleges and universities

**Los Angeles, California**

A Los Angeles federal judge said August 9 that he would allow a discrimination lawsuit filed against the University of California by a small Christian school in Riverside County to proceed.

Acting in a case that is being closely tracked by educators and free speech advocates nationwide, U.S. District Court Judge S. James Otero rejected UC's effort to dismiss several major allegations in the suit and allowed it to move forward. The written order followed a tentative ruling in the case in June.

The plaintiffs—Calvary Chapel Christian School of Murrieta, several of its students and a group representing four thousand Christian schools nationwide—filed suit in 2005 accusing UC of discriminating against them by setting admissions rules that violate their freedom of speech and religion. The plaintiffs allege that UC is biased in its admissions standards against courses taught from a conservative Christian viewpoint, while generally approving those from other religious and political perspectives.

The university has denied the allegations, saying that schools are free to teach what they wish but that UC must be able to reject high school courses that do not meet its standards or that provide more religious than academic content.

Christian educators and higher education officials have said the case could affect admissions policies across the country.

In a twenty-five-page ruling, Otero granted limited relief to the university, dismissing the lawsuit's allegations against several UC administrators in their individual capacities, among others. But he said he would allow Calvary Christian and the other plaintiffs to pursue their key claims against the public university system on the basis of constitutional protections to freedom of speech, association and religion.

"It is evident that the plaintiffs have alleged sufficient facts to state a claim for violation of the freedom of speech in the forms of content-based regulation and viewpoint discrimination," the judge wrote.

Otero also said the schools had shown, at least for purposes of allowing the suit to proceed, that they had been required to choose between teaching courses that promoted their religious views and complying with UC's requirements.

Attorney Robert H. Tyler, who represents the Murrieta school, said that he was happy with the judge's decision. "This allows the vast majority of our claims to proceed to trial," he said. "We're very pleased, because the substance of our case, which includes all of our federal constitutional claims, will go forward."

UC counsel Christopher M. Patti said he had not had a chance to read the order, but was not surprised, based on the tentative ruling. "Now we'll get into the facts phase of the case, and we believe the facts support our position: that we haven't discriminated against Christian schools or students and that the students' rights have not been violated," he said.

The case is expected to go to trial within a year. Reported in: *Los Angeles Times*, August 9.

**Los Angeles, California**

A former college radio shock-jock who lost his radio spot is not protected by a California law designed to extend free speech rights to private colleges, according to a ruling by a state appeals court. The court ruled that the Leonard Law, which protects students at private California colleges from "disciplinary sanctions" levied for speech that would be protected off-campus, only applies to students currently enrolled at an institution.

Jason Antebi, a 2004 Occidental College graduate who hosted a show at the college called "Rant and Rave," was kicked off the show shortly after he called two identifiable students' names—"bearded feminist," and "douche," respectively—on his show. Antebi, who said he was an outspoken conservative member of the student government, said that the students he made fun of had been publicly calling him racist, anti-Semitic, and said that he sexually harassed women.

Antebi said he complained to administrators, but when they didn't respond, he took the fight to the airwaves. Within weeks of unleashing his select monikers, Antebi was forced to leave "Rant and Rave."

A panel of three judges ruled that Antebi could not pursue damages under the Leonard Law, named for its chief legislative sponsor, because he had graduated by the time he filed a lawsuit. "This all happened just before I graduated," Antebi said. "There was no way I could have gotten a lawyer and filed suit in time."

The court opinion pointed out that the Leonard Law states in "plain language," according to the opinion, that "any student enrolled … may commence a civil action."

"The Legislature easily could have extended application of the statute with the words 'any student enrolled or who was enrolled,'" the opinion adds.

Stuart Tochner, the lawyer for Occidental, added that the Leonard Law only allows students to have "injunctive and declaratory relief," meaning that the court can order an institution to perform a certain action, but the law does not mention pursuing damages. "The fact that the legislature decided that those are the only types of relief available,"

Tochner said, "makes it crystal clear that the legislation is only for current students."

Proponents of campus free speech said the ruling, the first of its kind that any of them had heard with respect to the Leonard Law, could set a dangerous precedent. Mark Goodman, director of the Student Press Law Center, said the court's interpretation of the Leonard Law is "certainly not what the intent of the legislature was in enacting the statute … it really effectively means that [institutions] can censor all they want if they do so in the last semester of the student's senior year."

Greg Lukianoff, president of the Foundation for Individual Rights in Education, said that, under the court's interpretation of the Leonard Law, an institution could protect itself by simply expelling a student, because the student would no longer be enrolled, and thus would be in the same situation as Antebi.

Christopher W. Arledge, Antebi's lawyer agreed, and said "this loophole that the court has opened is a big one."

Bill Leonard, formerly a member of the California State Assembly, and author of the Leonard Law, said that, without thoroughly reviewing the court's opinion, he thinks that it "narrowly might be correct" in deciding Antebi was not protected. Leonard said "the intent of the law was to protect students from academic discipline due to the exercising of their free speech rights." Leonard said he's disappointed Antebi was taken off of his show, but said Antebi's removal does not constitute academic discipline.

Leonard said he created the law to prevent, for instance, a college from withholding a student's grade unless they take sensitivity training. "Things that would affect their academic career," Leonard said. He added that, if the opinion is extended so that expelled students—who have suffered academic harm—are not protected, "it would be wrong."

Beyond the Leonard Law, the court upheld a trial court's dismissal of six of Antebi's seven claims. The six claims were dismissed on the basis that they "arise out of the disciplinary procedure." For example, Antebi claimed that Occidental violated the Family Educational Rights and Privacy Act of 1974 by releasing information about him during an investigation of Antebi that occurred after the students he insulted filed sexual harassment complaints based on the insults.

The court ruled that, because any alleged FERPA violation would have been part of the disciplinary process, Antebi has no basis for a claim. Arledge said the ruling leaves no room for a student to seek damages for any tort committed as part of an institution's disciplinary procedures.

The court did rule that Antebi can go ahead with his defamation claim against Sandra Cooper, Occidental's general counsel. According to court documents, Antebi said that, in March 2004, about two weeks after the controversial radio show, Cooper yelled into a hallway at Antebi that he was, among other things, "racist," sexist," "immoral," and "trash." Antebi said other people in the hallway heard the comments.

Tochner said Cooper denies the allegations, and "we're confident that the college will defend [the defamation claim] if it ever goes forward."

Arledge said he plans to appeal to the Supreme Court to overturn the dismissals, and that Antebi, who now works for a radio station in Los Angeles, will pursue the defamation claim. Reported in: insidehighered.com, August 18.

**New York, New York**

In a case considered a bellwether of United States policy toward foreign scholars, the government has decided not to appeal a court ruling ordering it to either issue a visa to Tariq Ramadan, a prominent Swiss Muslim scholar, or provide good reasons for not doing so.

A federal court issued the ruling in June in a lawsuit brought on Ramadan's behalf by the American Academy of Religion, the American Association of University Professors, and the PEN American Center. The American Civil Liberties Union, which is representing the plaintiffs, filed the lawsuit.

The government had been widely expected to appeal the ruling. But on August 22 it let the sixty-day deadline for appeal pass without doing so.

Vijay M. Padmanabhan, a lawyer with the U.S. State Department, confirmed that federal officials had "decided not to appeal the ruling." Neither he nor press officers at the Departments of State and of Homeland Security would comment on what the government intended to do next. "We will continue to consider Mr. Ramadan's visa request," Padmanabhan said.

The ACLU, which has challenged the government's right to exclude other foreign scholars as well, called the development a significant step. The June ruling means "the government can't exclude a foreign citizen simply because of his speech," said Jameel Jaffer, the ACLU lawyer who is leading the group's legal case.

"We hope the fact that the government is not appealing is a sign the government is reconsidering its policies," he said. "I hope I am not being overly optimistic."

In the past several years, there have been a number of cases in which foreign scholars planning to come to the United States for academic activities were denied entry. Last year, for example, the Bolivian historian Waskar T. Ari, an expert on Andean indigenous movements, was prevented from taking a teaching post at the University of Nebraska at Lincoln. In June of this year, John Milios, a professor in Greece who is a member of what he described as "a pro-reform communist party" and had a U.S. visa to attend an academic conference, was detained when he arrived at a New York airport and put on a flight back to Greece.

In most of the cases, the government has provided no reasons, or referred vaguely to security concerns. The ACLU and other critics of the government's policy say the administration has been excluding scholars simply because it does not like their political views.

Ramadan, an expert on, and authority among, European Muslims, has angered some people by his criticisms of Israeli policies. In 2004, the U.S. authorities revoked a visa issued to Ramadan, who had been hired as a tenured professor at the University of Notre Dame. The government did not provide a reason, but officials referred to a provision of the US PATRIOT Act allowing exclusion of foreign citizens who have "endorsed or espoused terrorism."

Last fall, more than a year after he was supposed to have begun his job at Notre Dame, Ramadan accepted a visiting fellowship at the University of Oxford. Around the same time, Britain's prime minister, Tony Blair, appointed him to a committee established to examine ways to root out extremism in Britain.

Britain's acceptance of Ramadan was noted in the opinion issued in the lawsuit on the scholar's behalf. Judge Paul A. Crotty of the U.S. District Court in Manhattan wrote that "while the United States has not granted Ramadan a visa to enter the country, Great Britain, its one staunch ally in the battle against terrorism, has not only admitted him into England so that he may teach at Oxford, but has enlisted him in the fight against terrorism." Reported in: *Chronicle of Higher Education* online, August 25.

## broadcasting

**Washington, D.C.**

The FCC will get a chance to review and potentially re-do four profanity findings it made in March, and its fleeting profanity crackdown on those cuss words in those four cases will no longer be enforceable while it does.

That is according to the U.S. Court of Appeals for the Second Circuit in New York, which on September 7 granted the FCC's request to delay a broadcaster challenge to those rulings for sixty days while the FCC reconsiders them. The court stayed enforcement of its Golden Globes decision finding the f-word, and by extension the s-word, indecent, as applied to the four cases at issue.

It is unclear whether it applies to all fleeting profanities, but the decision says that the enforcement of the four decisions, "which applies the standards announced in the Golden Globes order, is hereby stayed." The FCC, for one, sees the stay as narrow, so broadcasters beware.

"We are pleased by the Court's decision," the FCC said in a statement. "It ensures that the Commission will have the opportunity to hear all of the broadcasters' arguments first. The Court stayed only a limited portion of the order which the Commission had requested to reconsider."

"Hollywood argues that they should be able to say the f-word on television whenever they want. The Commission continues to believe they are wrong, and there should be some limits on what can be shown on television." Translation: There is no free profanity pass for the duration of the stay. The FCC believes it still has the power to fine an f-word during the stay, just not that it can use one of those four decisions as precedent.

Media Access Project President Andrew J. Schwartzman, whose group represents one of the parties in the case, saw it differently. He says that by staying, for the forseeable future, the FCC's decision that uses of the s-word and f-word in an isolated way is presumptively profane—at least until the case is decided—"cuts the heart out of the FCC's crusade against potty-mouth speech."

What it doesn't address, he says, is the FCC's fine of CBS's *Without a Trace*, Janet Jackson or others for nudity or suggestive sex.

"I don't see how it can be anything other than a general stay," says First Amendment attorney John Crigler of Garvey Schubert Barer, something the FCC was trying to avoid. Does this mean broadcasters are free to swear with impugnity in prime time, at least for the next several months? Crigler thinks not. "I don't think this strips the FCC of its power, it just suspends its ability to use that power."

As a practical matter, the decision means the FCC will almost certainly steer clear of fleeting profanity fines for the near future. One industry source saw the court's invocation of the Golden Globes decision, albeit parenthetically, as a clear sign it was broadening the stay beyond those four findings to the whole of fleeting profanity enforcement, which was a reversal by the Powell FCC of previous FCC policy.

The source also pointed out that, to grant the stay, the court had to find that there was a likelihood broadcasters could win on the merits of their challenge, and that there would be irreparable harm if enforcement was not suspended.

"The Second Circuit, in granting our stay request, has recognized the serious First Amendment issues that are raised in this appeal," said Fox in a statement, "and the chilling effect of the FCC's indecency enforcement scheme."

Paul Levinson, chair of the communications and media studies department at Fordham University, was unhappy the court stopped at just a stay: "The Court should have struck down the rules right now, as the blatant violation of the First Amendment that they are. Other than deciding in the two months that its rules are dead wrong—highly unlikely—giving the FCC more time only serves to prolong a state of affairs in which the First Amendment is being increasingly trampled."

After the FCC's sixty-day review, and only sixty days

the three-judge panel of the court makes clear, the court will expedite hearing on the merits.

The court heard oral argument last week in which the networks—except ABC—pushed for a hearing on the merits, saying if the court decided to delay the start of the case so the FCC could rethink the decisions, it should only be while granting a stay of any findings based on "fleeting profanities."

The judges had expected to have a decision, but it took longer than they thought, somewhat frustrating the clerk's office, which was being peppered with phone calls looking for an outcome.

The FCC also said it could live with a stay, but only one that applied to the four cusses in question, not the general policy which extands back before March to its finding in the case of Bono's fleeting f-word on NBC's Golden Globes broadcast.

The commission has promised to give stations a chance to respond to the findings and defend themselves—a step the FCC bypassed the first time—then decide what, if any, modifications to make, all within 60 days.

If the court says no, the same court will proceed to hear the broadcaster challenge to the rulings on their merits.

The FCC, joined by ABC, NBC, and CBS affiliate associations, asked a New York Court to delay its scheduled hearing of a challenge to four indecency findings against fleeting expletives—like "bullshit"—that were part of the FCC's March indecency findings. The incidents at issue occurred during a 2004 airing of CBS' *The Early Show*, Fox's 2002 and 2003 broadcasts of *The Billboard Music Awards*, and a 2003 episode of ABC's *NYPD Blue*. 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.

The four findings 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. ABC did not oppose the FCC request for remand, while the other networks and the Fox affiliate association wanted the court to proceed directly to a trial on the merits unless a blanket stay was granted on all fleeting profanity enforcement until the case was settled.

The FCC's initial decision in Bono was that a fleeting, adjectival f-word was not indecent, but that was later reversed by the commissioners after Congress pushed the FCC to reexamine the case. Reported in: *Broadcasting and Cable*, September 7.

## press freedom

**San Francisco, California**

Two *San Francisco Chronicle* reporters must disclose their sources of grand jury testimony by baseball star Barry Bonds and other prominent athletes about the use of performance-enhancing drugs, a federal judge in San Francisco said August 15 in a ruling that would lead to the jailing of the reporters.

Neither the constitutional right of freedom of the press nor federal law shields journalists from testifying to a federal grand jury about confidential sources, U.S. District Court Judge Jeffrey White said. "The court finds itself bound by the law to subordinate (the reporters') interests to the interests of the grand jury" in discovering the source of the leaks, White wrote. "The grand jury is inquiring into matters that involve a legitimate need of law enforcement."

White rejected the *Chronicle's* argument that reporters should not be compelled to testify if the public benefit of their reporting outweighs the harm caused by the disclosure of grand jury material. Articles by the reporters, Mark Fainaru-Wada and Lance Williams, helped prompt professional baseball to adopt new rules to police steroid use by players.

A court, White wrote, should not engage in "a balancing test that would require it to place greater value on the reporting of certain news stories over others."

The ruling allows federal prosecutors to summon the reporters before a grand jury that is looking into the leaking of athletes' testimony before another grand jury that was investigating the Bay Area Laboratory Co-Operative. If they refuse to testify, prosecutors can then ask White to hold them in contempt of court and jail them until they agree to talk. After the ruling, Fainaru-Wada said, "We're steadfast and resolute in that we're going to stand behind the sources." He and Williams remain hopeful, he said, that "at some point there's going to be a judge or judges who recognize the public good of the stories . . . and ultimately we will prevail."

In September the two reporters refused to testified and were ordered into custody.

"We will not comply with the government's effort, which we believe is not in the best interests of an informed public," *Chronicle* editor Phil Bronstein said. He said the ruling "does not change our complete commitment to Mark and Lance. We support them fully in maintaining the confidentiality of their sources. We will pursue all judicial avenues available to us."

White's ruling is the latest in a series of legal and political setbacks for reporters in the federal system, where state shield laws do not apply. Nearly every state has such a law, either by legislation or by court decision. California's voter-approved law, one of the strongest, protects journalists

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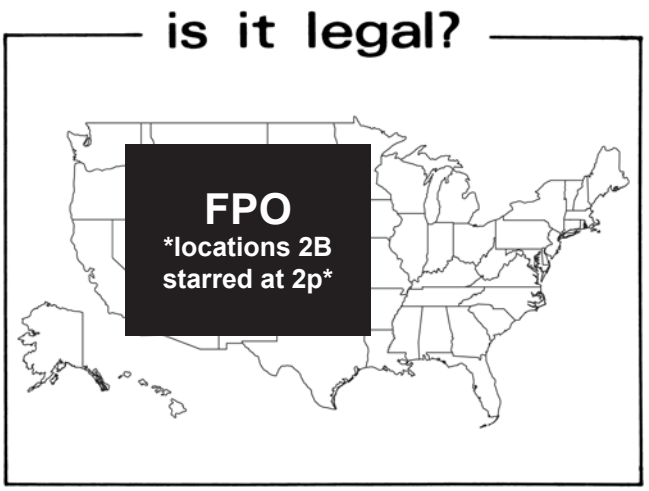


## library

**Worcester, Massachusetts**

Despite Worcester Public Library's decision to alter its circulation policy to accommodate residents living in homeless shelters, an advocacy group that filed a lawsuit against the library in July says further changes are needed. Jonathan Mannina, executive director of the Legal Assistance Corporation of Central Massachusetts, said the new policy was a "positive development" but not yet perfect.

"We're still trying to iron out some details that we hope will lead to a resolution of the case," Mannina said October 4, although he refrained from citing specifics. A hearing was scheduled in federal court for October 27.

"Some people continue to be concerned about the retrieval of nonreturned items," said Head Librarian Penelope B. Johnson. "We're going to be monitoring our losses and talking with agencies about encouraging them to help us if things aren't being returned." She added that the board of directors is considering some fundraising efforts to help replace any missing materials. Reported in: *American Libraries* online, October 6.

## schools

**Louisville, Kentucky**

A middle-school teacher who burned two American flags as part of a civics lesson was removed from the classroom. Dan Holden, a seventh-grade social studies teacher at Stuart Middle School, burned the flags August 18 as part of a lesson on freedom of speech, Jefferson County schools spokeswoman Lauren Roberts said.

The students were asked to write an opinion paper on the flag burning, Roberts said. The burning did not appear to be politically motivated, she added. Holden, who has taught in the district since 1979, has been reassigned to non-instructional duties while the incident is under investigation.

Roberts said at least one parent complained to the district. "Certainly we're concerned about the safety aspect," Roberts said, along with "the judgment of using that type of demonstration in a class."

Pat Summers, whose daughter was in Holden's class, said more than twenty parents showed up at the school, upset over the incident. Reported in: *Dallas Morning News*, August 21.

**Laurel, Maryland**

Amber Mangum was a frequent reader during lunch breaks at her Prince George's County middle school, silently soaking up the adventures of Harry Potter and other tales in the spare minutes before afternoon classes. The habit was never viewed as a problem—not, a lawsuit alleged, until the book she was reading was the Bible.

A vice principal at Dwight D. Eisenhower Middle School in Laurel ordered Amber, then 12, to stop reading the Bible or face punishment, according to a lawsuit filed September 29 by Amber's mother. The lawsuit, filed in U.S. District Court in Greenbelt, alleged that the vice principal's actions violated the girl's civil rights.

"Amber's a new Christian, and she's trying to learn all she can," said Maryann Mangum, the girl's mother. "She reads her Bible and she goes to Sunday school. . . . It really upset me when she was not allowed to read it on her own time."

Mangum said her daughter was reading her Bible on September 14 when Vice Principal Jeanetta Rainey approached. According to Mangum and the lawsuit, Rainey told Amber that reading the Bible violated school policy and that she would face discipline if she continued to do so.

Later that day, Amber recounted the episode to Mangum, who is her adoptive mother and also her biological grandmother. James Baker, a family friend, sent a note to the school asking that the principal identify any policy barring students from reading the Bible during their free time. The note quoted a section of the school system's administrative procedures, saying that students "may read their Bibles or other scriptures, say grace before meals, and pray before tests to the same extent they may engage in comparable, non-disruptive activities."

The principal, Charoscar Coleman, did not respond, the lawsuit said. A friend at Mangum's church suggested that Mangum contact the Rutherford Institute, a nonprofit legal

organization specializing in cases that involve issues of religious and civil liberties.

The institute's president, John W. Whitehead, said the law is clear and that Amber's rights were violated. He said the lawsuit does not specifically seek monetary damages but rather that a judge declare that students cannot be barred from reading the Bible during free time at school. Reported in: *Washington Post*, October 3.

**Bridgeport, West Virginia**

A legal battle over a painting of Jesus hanging in a high school here is continuing, even though the painting was stolen. Two civil liberties groups, Americans United for Separation of Church and State and the American Civil Liberties Union of West Virginia, filed suit in June to remove the painting, "Head of Christ," saying it sent the message that the public school endorsed Christianity as its official religion.

The Harrison County Board of Education said it would fight the lawsuit, promising not to spend public money in defending itself. The Christian Freedom Fund raised more than $150,000 for a defense, including $6,700 raised by students at the school. The board selected the Alliance Defense Fund, a national legal organization founded in part by the Christian group Focus on the Family, as its lead counsel.

"We have decided to step up to the plate here," said a school board member, Mike Queen. "This is important to us and reflects what our community wants in the schools."

But on August 17 the painting, which had been at Bridgeport High School for thirty-seven years, was stolen from a wall outside the principal's office. The theft was recorded by security cameras, but the thief hid his face.

"The most logical question is, 'Now that the picture's gone, is it moot?'" said the Harrison County school superintendent, Carl Friebel. "We're all in uncharted water here, but if it resurfaces, then the case wouldn't be moot."

School board members said they hoped the thief would be found, and Friebel said local churches had offered to replace the painting.

Communities across the country are fighting to keep Christian monuments, crosses and portraits in place, encouraged by the Bush administration's conservative appointments to the United States Supreme Court, said Douglas Laycock, a professor of constitutional law at the University of Texas and an expert in separation of church and state cases.

"Schools are considered the most sensitive location because with children, personal matters like religion are to be left to parents, not government," Laycock said. Monetary support like that raised for the Bridgeport legal battle does not always indicate a unified community standard, he added. "These religiously homogeneous small towns may have a large majority of a single faith, but they're not nearly as unanimous as they might imagine," Laycock said.

The two civil liberties groups that filed the lawsuit on behalf of local plaintiffs do not believe it is up to the community to decide. "I think what you're dealing with is a small group of rabble-rousers that only want to live with people who live as they do," said Andrew Schneider, executive director of the ACLU of West Virginia. "My answer to that is go to a private school, go to a parochial school; don't go to a public school."

Tokens of Christianity, including crosses and religious mottos, can be found in schools and government buildings all over Harrison County. The amenities in a women's restroom at the Board of Education offices include a leatherbound pocket copy of the New Testament, with Psalms and Proverbs.

Pattae Kinney, a parent in Bridgeport, a town of eight thousand people and forty churches, says she does not understand why her daughter's school is being singled out. "My take on this is that our country was founded on Christian principles," Kinney said. "It's on our money—'In God We Trust'—it's in our Pledge of Allegiance, it's a part of our lives. I know our community, and we're very in favor of keeping this painting." Reported in: *New York Times*, August 21.

## colleges and universities

**Atlanta, Georgia**

Georgia Institute of Technology has agreed to alter a campus policy that students who sued the institution assert has been used to restrict free speech, as part of an accord to settle part of the students' lawsuit.

Two officers of the campus's College Republican group sued Georgia Tech in March, saying that officials at the public institution had impaired the students' free speech rights by shutting down their "affirmative action" bake sale and by limiting their efforts to protest against "The Vagina Monologues," among other things. The Alliance Defense Fund, a legal advocacy group that represented the students, argued in its complaint in *Sklar* v. *Clough* that Georgia Tech officials had based their actions against the students on the institute's residence hall policies, which defined a series of "acts of intolerance" that were banned under the policy.

Most objectionable to the student plaintiffs were provisions in the policy that restricted "any attempt to injure, harm, malign or harass a person because of race, religious belief, color, sexual/affectional orientation," and any "denigrating written/verbal communication . . . directed toward an individual because of their characteristics or beliefs." The lawsuit defined those provisions as overbroad and "draconian."

Georgia Tech officials denied that they had censored the students, and said they would vigorously defend the lawsuit.

But on August 14, lawyers for the institution went

before a federal judge in Atlanta with a plan, drafted with the Alliance Defense Fund, to alter or drop several provisions of the "acts of intolerance" policy. Among the changes, which the federal judge in the case approved, the university agreed to eliminate the provisions that had most troubled the students.

The parties also agreed that Georgia Tech would make no changes in the policy without the judge's approval for five years. The agreement does not affect the rest of the lawsuit, including the students' charges that their free speech rights had been infringed. The case will proceed.

A spokesman for Georgia Tech, David Terraso, sought to minimize the significance of the university's concessions. He challenged the assertion that the now-amended policy is a "campus speech code," saying that it applies "only to students who live in campus housing."

But David French, senior legal counsel at the Alliance Defense Fund, asserted that Georgia Tech has used the "acts of intolerance" policy to clamp down even on students who do not live in campus residence halls, and that it is the "only policy Georgia Tech has that would empower" its officials to take the actions they have taken against his clients.

More importantly, French said, "the fact that the policy exists, even independent of the incidents in the case, is a violation of students' Constitutional rights." So the fact that Georgia Tech has agreed to abandon key elements of the policy, he said, "is much more meaningful."

"We have not yet dealt with the question of what happened in the past," French said. "But Georgia Tech had on its books a policy that dramatically restricted free speech. Getting rid of that policy opens the market place of ideas in a formal sense. What this order deals with is the present and future." Reported in: insidehighered.com, August 16.

**Portland, Maine**

University of Southern Maine President Richard L. Pattenaude announced September 8 that he was shutting down—that day, and before the exhibit even had its official opening—a display of art by Tom Manning, who had been convicted in the murder of a New Jersey state trooper and who was implicated in numerous bombings while he was a member of a radical underground group known as the United Freedom Front or the Ohio 7, which justified its acts as "resistance to America's steady progress toward fascism."

The exhibit, "Can't Jail the Spirit: Art by 'Political Prisoner' Tom Manning and Others," was organized by a Portland group; it also included artwork by some Southern Maine students. When the exhibit opened a week ago, police groups in Maine and New Jersey denounced the organizers for glamorizing a cop killer and bombarded Southern Maine officials with calls and e-mail. Protests were scheduled and the widow of the New Jersey trooper whom Manning killed was planning to travel to Portland for the protests. Donna Lamonaco told Maine journalists that "my husband's honor is being spit upon."

Pattenaude's statement cited two reasons for shutting down the exhibit. First, he said "the exhibit itself, and the purpose behind it, have become misunderstood and needlessly divisive. What was to be a forum has become a battleground. Academic freedom is a precious part of university culture but it is not being served by the current situation." Second, he said, "I've become alarmed about the increasingly intense criticisms leveled at this university and members of our staff, some of whom feel threatened. Our people have acted in good faith, but significant mistakes were made, and lessons have been learned. We just did not do our homework."

As part of the exhibit, the university had scheduled a forum in October to discuss political prisoners and dissent. Pattenaude said the forum would take place, but he was asking the Faculty Senate to help plan the event to assure full and open discussion. Pattenaude noted that the exhibit included a statement from an art professor noting that the university did not endorse Manning's views or condone his acts. But at the same time, Pattenaude said the university did not fully understand the context of the exhibit. "I want to apologize to the people of Maine and elsewhere for the fact that we did not understand earlier the criminal acts associated with this exhibit, nor the sense of outrage and depth of personal pain they generated," he said.

Organizers of the exhibit could not be reached, but several students involved attended Pattenaude's announcement and said he was censoring ideas. Press reports said that students carried signs saying "USM Suppresses Free Speech."

Faculty reaction was more measured. Michael Shaughnessy, an art professor, said he reluctantly found himself agreeing with the decision to shut the exhibit. "It has gotten so out of hand and so far away from the intent that this seemed necessary," he said. Reported in: insidehighered.com, September 11.

**Cambridge, Massachusetts**

A speech at Harvard September 10 by Mohammed Khatami, the former president of Iran, set off a political debate on the campus and in the Boston area—with Khatami's critics divided between those who said the university had no business inviting him and those who said it was appropriate for him to be invited, but that he should still face protests.

About two hundres students protested the speech, and there were no reports of disruption at the event, one of a series of appearances by Khatami in the United States.

Harvard frequently attracts high profile and controversial foreign figures—and Massachusetts typically helps with security. But Gov. Mitt Romney, a Republican who is considering a presidential bid, barred state agencies from

providing the police escort that someone like Khatami would normally receive. Local police filled in. Romney called Khatami's appearance "a disgrace to the memory of all Americans who have lost their lives at the hands of extremists, especially on the eve of the five-year anniversary of 9/11."

Romney outlined a long list of ways Khatami's government supported terrorism and violated basic concepts of civil rights. Harvard officials defended the need for the university to be open to talk about Khatami's record and to promote dialogue. Many experts on Iran also disputed Romney's analysis of the country, noting that Khatami was seen as a reformer and that his power was much more limited than the title of president may suggest.

Student groups that organized protests included students focused on Iranian human rights and a bipartisan coalition of Harvard's Democratic and Republican organizations. Unlike Governor Romney, however, the student groups said that they were protesting to encourage tough questioning of Khatami and to draw attention to abuses in Iran. They said they were not trying to prevent the event from taking place, and that it was appropriate for Harvard to provide a forum.

"Only the strength of our American traditions of freedom, open debate, and democracy will allow us to win the hearts and minds of reformers throughout the Muslim world and provide an alternative to Islamic fundamentalism," said the statement from Harvard Democrats backing the protest. "We believe Sunday's event with President Khatami will be a display of American strength—an important example to the rest of the world of the American tradition of free speech." Reported in: insidehighered.com, September 11.

**Las Cruces, New Mexico**

The American Civil Liberties Union filed a federal civil rights lawsuit on behalf of three former athletes at New Mexico State University who said they were discharged from the football team because of their Muslim faith.

The plaintiffs—Mu-Ammar Ali and twin brothers Anthony and Vincent Thompson—accused the head football coach, Hal C. Mumme, of making them "feel like outcasts" because of their religion, in violation of their First Amendment rights.

The complaint, which was filed August 28 in U.S. District Court in Las Cruces, also alleged violations of the Equal Protection Clause of the 14th Amendment and Title VI of the Civil Rights Act of 1964. It named William V. Flores, the executive vice president and provost of the university, and the university's Board of Regents as defendants.

According to the complaint, Mumme, who began as the head football coach in the spring of 2005, "initiated a practice of having players lead the Lord's Prayer after each practice and before each game." The plaintiffs, who chose to pray separately and in accordance with their faith, claim that the coach treated them differently once he found out that they were Muslim. He prohibited two of the plaintiffs from attending a team event, and repeatedly questioned the third about his thoughts on the terrorist group Al Qaeda, the complaint says.

Ali, who had been a starting tailback and had received a football scholarship every year since 2002, suspected religious discrimination when he was demoted to fifth string in September 2005, then discharged from the team a month later.

The Thompsons, who had been recruited by Mumme's predecessor and had been promised athletics scholarships, were discharged from the team in September. According to the complaint, "the explanation given for their release was that they were 'troublemakers' and that they had moved their belongings to an empty locker in the locker room without requesting permission to do so."

Ali and the Thompsons filed grievances against Mumme through the university soon after their dismissals. The ACLU represented the players in the grievance process.

The university hired Miller Stratvert, an Albuquerque-based law firm, to investigate the allegations against Mumme, and in November the Board of Regents announced that Ali and the Thompsons had been discharged for performance reasons and rule violations, not because of their religious beliefs.

The university thought that was the end of the issue, according to Bruce R. Kite, the university's general counsel, who said he did not hear from the ACLU again until receiving a copy of the lawsuit. "We have not had any communications with the ACLU for a number of months, and then to get this lawsuit unexpectedly at this time—three days before our first game of the season—leads me to question what is really going on here," he said.

Kite, who said he had not yet had a chance to thoroughly examine the lawsuit, said he sees this as a case of "a disgruntled former athlete" who didn't "like the fact that he was demoted." He called the allegations of civil-rights violations a "red herring" masking what he thought was the true issue: "someone that's not happy about losing a starting spot."

Peter G. Simonson, executive director of the ACLU's New Mexico chapter, said the lawsuit represents a much bigger problem than three students' gripes against their former coach. "This case is about a few university officials who took it upon themselves to assert their religious beliefs, their narrow range of religious beliefs, over the players and the team," he said.

The regents' decision last fall following the investigation of the complaints against Mumme "did not resolve some very substantive concerns that had been brought to their attention," Simonson said. "Just because he's the coach, he doesn't have the right to make a football team into a religious brotherhood." Reported in: *Chronicle of Higher Education* online, August 30.

**Akron, Ohio**

If you want to take a job at some public universities in Ohio, you'll need to fill out a form declaring that you have no ties (as described in six broad questions) to any terrorist groups as defined by the U.S. State Department.

The form was created this year by Ohio law and applies to all new employees of state agencies. The universities that are starting to have new employees fill out the forms said they are just following the law. But the American Association of University Professors said the forms are even broader than McCarthy-era loyalty oaths, are unconstitutional, and "gravely" threaten academic freedom.

In a letter sent to the president of the University of Akron, one of the institutions starting to use the forms, the AAUP said that asking potential faculty members to certify that they have never provided any help to any such group threatens "a broad range of clearly protected free speech and academic freedom." The letter was sent on the AAUP's behalf by Robert M. O'Neil, a professor of law at the University of Virginia and director of the Thomas Jefferson Center for the Protection of Free Expression.

Akron officials said they had surveyed all of the state's public universities and that all were using the form, although some were excluding graduate fellowships and many were not requiring student work-study employees to sign. Ohio State University and the University of Cincinnati confirmed that they were using the form.

The new form asks potential employees six questions and any "Yes" answer is grounds for not getting the job. Refusing to answer a question is also considered an affirmative answer. The questions are: Are you a member of an organization on the U.S. Department of State Terrorist Exclusion List? Have you used any position of prominence you have with any country to persuade others to support an organization on the U.S. Department of State Terrorist Exclusion List? Have you knowingly solicited fund(s) or other things of value for an organization on the U.S. Department of State Terrorist Exclusion List? Have you solicited any individual for membership in an organization on the U.S. Department of State Terrorist Exclusion List? Have you committed an act that you know, or reasonably should have known, affords "material support or resources" to an organization on the U.S. Department of State Terrorist Exclusion List? Have you hired or compensated a person you knew to be a member of an organization on the U.S. Department of State Terrorist Exclusion List, or a person you knew to be engaged in planning, assisting or carrying out an act of terrorism?

There is a provision for appealing a job denial related to refusing to fill out the form. However, the form required for an appeal asks many of the same questions in different ways. For example, to file an appeal, one would need to answer the question "to which organization on the Terrorist Exclusion List was material assistance provided?"

Academic groups have long opposed job requirements that include questions of the "are you now or have you ever been a member" variety. O'Neil of the AAUP said that the Ohio forms were more dangerous in some ways than those of the McCarthy era because the new requirements "are vaguer than those of the earlier era."

Many professors who would never help a terrorist group in any way would balk at answering questions such as these, which could be subject to interpretation or be used against professors who hold unpopular views. He also noted that there is not always broad agreement on which groups are terroristic and that asking professors whom they have persuaded to hold certain views is antithetical to academic values in many ways.

Paul Herold, a spokesman for Akron, said that officials there were surprised to receive the AAUP letter because the university is only carrying out the law and so are many other universities. "We are an agency of the state. We are compelled to follow the law," he said. "It is the role of the AAUP to speak out on these issues and not the role of the university."

O'Neil of the AAUP said the association also would protest to any other Ohio universities found to be having new faculty members fill out the forms. He noted a series of court cases rejecting loyalty oaths in various forms, and said that while he agrees that universities must follow the law, there is more to that than just going along. "A concerned administrator might in a case of uncertain application and constitutional doubt such as this one seek clarification, including a ruling by the state's attorney general," he said.

In 1970, O'Neil recalled, when John Millett was chancellor of the Ohio Board of Regents, he told legislators that he didn't have time to appoint the hearing officers needed to carry out a law that was passed—to the dismay of many academics—to make it easier for public universities to kick out students who engaged in protests. The law wasn't enforced, O'Neil said, in part because university administrators stood up for principles. "A simple administrative mandate should not end the matter," he said of the current situation.

Another flaw in the new law, he said, is that it won't work. Would a terrorist committed to mass murder really lose sleep over giving a false answer on an Ohio form? "Real terrorists are not going to be deterred by this. If you have someone bent on infiltrating a state agency, it's not going to do anything," he said. All the new form does, he added, is create problems for "conscientious academics." Reported in: insidehighered.com, August 15.

**Orem, Utah**

Some professors and students at Utah Valley State College are a bit confused after the institution's Board of Trustees asked in August that conservative political ideologies be taken into account regarding a planned course requirement for 2008–09.

Academic committees have worked for nearly five years to develop language for a new "global/intercultural" general education requirement for students, which was motivated in part by December 1999 recommendations from the Utah State Board of Regents Task Force on General Education. The report said that an educated person should "appreciate diversity" and possess the abilities "to integrate ethical, cultural, and historical considerations in the humanities" and "to relate another's humanity to one's own."

In constructing the new requirement, which would call for students to take one course in any number of departments, committee members interviewed multiple faculty members, students and others from colleges in the state. They ultimately decided that courses satisfying the requirement must study cultural differences; advocate critical assessments of such differences and their meaning; and pay particular attention to groups within global, local, or campus community contexts that "many of our students are unlikely to have examined."

"We tried to be diplomatic in developing it," Bill Evenson, chair of the college's General Education Committee, explained. He also noted that most other Utah colleges and universities have general education requirements that reflect the same tenets.

On August 10, however, some unexpected concerns were raised by more than one member of the institution's board at its summer meeting. The trustees were worried about "sensitive issues" that could offend the "conservative community."

While President Bill Sederburg told the trustees that he's happy to have the course requirements sent back and modified, others were not so sanguine. Evenson, for one, doesn't know what more needs to be done. "I'm not entirely sure how they want us to tighten up the phrases," he said. "I'm going to contact them and ask for suggestions before the next board meeting in October." He had expected a proposal supporting the requirement to pass at the board meeting.

He added, though, that the conservative talk wasn't entirely unexpected. "Our committee was aware that some people think we should reflect the values of our conservative community," he said. "But we have always advocated an atmosphere of academic freedom."

Joseph Vogel, a recent graduate of Utah Valley State College, has seen tensions flare on campus regarding political ideology in the past. He was the student body vice president in 2004 when he invited filmmaker Michael Moore to speak on campus, sparking an uproar among local politicians and citizens. He's written a new book about the controversy, *Free Speech 101: The Utah Valley Uproar Over Michael Moore*, which was scheduled for national release in October.

The author said the climate on campus hasn't changed much over the last two years. "I feel that certain conservative people are trying to control the curriculum," he said. "But I'm surprised that this kind of class would raise eyebrows."

At the same time, Vogel said he believed that many professors at the college are liberal. "But on the whole, it's pretty balanced," he added. "Students should be able to sort the information presented to them and come to their own conclusions."

Peter Walters, a senior majoring in analytic communications and social science, believes the requirement is needed at the institution. He works at the international office at Utah Valley State where he assists international students with their questions and American students with study abroad.

"I've spent three years of my life living as a minority on other continents—Africa and Asia—where I have learned much," said Walters. "Seeing the way people of other cultures approach problems in daily life is like mental floss; it loosens up my calcified perspectives."

Walters was saddened when he learned that the trustees have not yet approved the requirement. "It makes sense to me to have it," he said, "and I don't see how the community could possibly be offended by it." Reported in: insidehighered.com, August 15.

**Salt Lake City, Utah**

Scholars who endorse dissenting views about 9/11 have been creating numerous controversies in recent weeks. Both the University of Wisconsin at Madison and the University of New Hampshire have resisted calls that they remove from their classrooms scholars who believe the United States set off the events of 9/11 (see page 000). In both of those cases, numerous politicians said the instructors involved were not fit to teach, but the universities said that removing them for their views would violate principles of academic freedom.

At Brigham Young, however, the university has placed Steven E. Jones on paid leave, and assigned other professors to teach the two physics courses he started this semester. A statement from the university said, in its entirety: "Physics professor Steven Jones has made numerous statements about the collapse of the World Trade Center. BYU has repeatedly said that it does not endorse assertions made by individual faculty. We are, however, concerned about the increasingly speculative and accusatory nature of these statements by Dr. Jones. Furthermore, BYU remains concerned that Dr. Jones' work on this topic has not been published in appropriate scientific venues. Owing to these issues, as well as others, the university has placed Dr. Jones on leave while we continue to review these matters."

Although Jones did not respond to phone calls or e-mail seeking his views, he has published his papers about the World Trade Center on the Web site of a group called Scholars for 9/11 Truth.

Jones has taught at Brigham Young since 1985 and has

"continuing status," which is in some ways equivalent to tenure, and carries with it the "expectation" that a professor will continue to hold a position. Carri Jenkins, a spokeswoman for the university, said that Jones was regarded as "a good teacher" and that there had been no complaints about his raising 9/11-related issues in class. She said that Jones did not discuss his views on 9/11 in class, except when answering questions they posed to him after hearing elsewhere about his opinions. She said that while he is on paid leave, he will be permitted to do research on campus "in his field of study."

Asked whether removing a professor from the classroom for views expressed elsewhere was appropriate, she said that Brigham Young was "committed to academic freedom," but that the statements Jones made about 9/11 were different because they were not made in peer-reviewed academic journals. "Faculty are expected to submit their ideas to peer review that can be debated by experts," she said. Asked if this means Brigham Young professors cannot expect academic freedom protections when they write op-eds or speak at rallies or express their views anywhere but peer-reviewed journals, she repeated that Brigham Young supports academic freedom.

The American Association of University Professors censured Brigham Young for violations of academic freedom in 1998, saying that infringements on academic freedom were "distressingly common," and the university has remained on the association's censure list ever since.

Jonathan Knight, director of the Department of Academic Freedom and Governance at the AAUP, called Brigham Young's actions against Jones "indefensible," adding that academic freedom "has long been recognized to include the freedom to speak out in a public forum without fear of retaliation." The idea that a professor whose classroom conduct hasn't been called into question can be relieved of his classroom duties "cannot be accepted under any meaningful concept of academic freedom."

Knight scoffed at Brigham Young's statement that Jones was not protected for statements that had not been subject to peer review. He noted that professors at Brigham Young, like professors everywhere, speak out all the time without the benefit of peer review. Reported in: insidehighered.com, September 11.

**Madison and Superior, Wisconsin**

Over the last year, law schools have been the setting for disputes over whether student groups should have the right to receive institutional funds while restricting membership to those who share their religious beliefs—in violation of anti-bias rules.

In August, lawyers representing those groups indicated that they are taking their campaign beyond law schools by challenging the way two University of Wisconsin campuses are treating Christian organizations. The religious groups are now threatening to sue—and lawyers from a variety of perspectives are predicting that this may be the next major higher education case to reach the U.S. Supreme Court.

The Alliance Defense Fund, which represents religious groups, released a letter it sent to various University of Wisconsin officials. The letter focuses on the university's Madison and Superior campuses. The former has revoked recognition for a campus chapter of the Knights of Columbus and Superior has declined to recognize the InterVarsity Christian Fellowship. While there are multiple issues at play—some of them having nothing to do with anti-bias rules—both organizations restrict membership based on faith.

"The question is how much will the government try to limit the participation of religious groups in public life," said David A. French, president of the Alliance Defense Fund's Center for Academic Freedom. He said that colleges' anti-bias rules were being used "to limit the autonomy" of religious groups in "a strange ideological twist" that did not reflect the intent of those who pushed for non-discrimination policies. He added that many other religious groups that have not yet had their status challenged fear they will be next.

French cited recent court decisions that have suggested that federal judges are increasingly concerned about the ability of religious groups to maintain their cohesion, even within a pluralistic public university. In July, for example, a federal appeals court made permanent an injunction barring Southern Illinois University at Carbondale from denying recognition to the Christian Legal Society, which bars from its group anyone who does not embrace its religious beliefs or anyone who engages in gay sex. Southern Illinois had cited its anti-bias rules, but the appeals court found that denying the group the right to limit its membership would effectively deny the group its reason for existing.

Not every federal court has ruled that way, however. In April, a federal district court judge upheld the right of the University of California's Hastings College of Law to enforce its anti-bias policy and to deny recognition to its branch of the Christian Legal Society.

University officials in Wisconsin and elsewhere say there are legitimate reasons to stick by their anti-bias rules. Christopher Markwood, provost at Wisconsin-Superior, said he was aware that there were "competing court cases" and that some issues "have not been settled" yet. "We face a complicated constitutional and legal issue here," he said. (He also said that the group seeking funds on his campus had failed to correctly fill out application forms, so the current status of the group is not based on its religious views at all.)

Markwood noted that Superior—like many colleges—has two levels of student groups. Full recognition, which allows groups to receive student fees for activities, requires groups to abide by anti-bias rules. But he said that groups that wish to discriminate can still become registered student

groups, use university facilities, and promote their activities. Markwood noted that a number of religious groups have done so, and contribute to the spiritual life of the campus.

Madison officials have made similar arguments, although tensions grew as the university issued a series of news releases. On August 9, the university announced that it had reached an agreement with the Knights of Columbus in which the group would make changes in its policy and be eligible for funds. But Knights officials—and French, the lawyer working with them—disputed that and said no agreement had been reached.

The next day the university pulled its previous statements and posted a new one stating that the previous announcements had been made "in good faith." The issue has been sensitive politically for the university system. Republican politicians have been attacking the university for other policies on religion and for not firing an instructor who believes that the U.S. government orchestrated the 9/11 attacks.

Gregory Roberts, executive director of ACPA: College Student Educators International, said it was important to separate the issue of providing religious support from the question of anti-bias policies. He said many public institutions have historically "been so fearful about violating the separation of church and state" that they have "stayed away from helping students with the spiritual or faith component of their development." Roberts said he was pleased to see many more public universities welcoming religious activity on campuses.

At the same time, however, he said he supported the idea that colleges could require all student groups receiving support to be open to all students. "As an African American, I could be interested in a Latino group, and as a Methodist, I could be interested in what the Buddhists or Catholics are doing and I could decide to learn about them by joining," Roberts said.

Some religious leaders disputed the idea that enforcing anti-bias rules squelches expressions of faith. Madison's Hillel Foundation has about 30 affiliated student groups and none of them bar non-Jews from joining or exclude anyone from any activities, said Greg Steinberger, the executive director. "If you are on university space, everyone should be welcome," he said.

He said that some of those student groups—generally those focused on broad cultural activities, like setting up a Jewish film festival or working to help the local community—have sought and received funds from the university over the years. He said that student groups that are more focused on providing specific religious services have not sought funds. Steinberger said that supporting religious activities without seeking university funds in no way detracted from them.

"There is plenty of room for students to have a spiritually rich life on campus and it doesn't require university or government funding to do it," he said, adding that it was "preposterous" for groups to say that the denial of university funds limited students' ability to express their faith.

Sheldon E. Steinbach, vice president and general counsel of the American Council on Education, agreed. "From a traditional standpoint, it is difficult to believe that a state institution could fund with public monies activities on a campus that would preclude some students from participation." Steinbach said that Wisconsin's policies were in fact consistent with the way public institutions have acted for some time.

"Historically, the academic community has sought to preserve the right of any student to join in any extracurricular activity sponsored by the institution," he said. At the same time, Steinbach said that "the parameters of church-state relationships under the First Amendment have been in greater flux over the last decade and it is at the moment not possible to predict how a Roberts Supreme Court is going to rule on these matters." Steinbach predicted that within a year or so, the Supreme Court might well need to weigh in on the issue.

French said that wouldn't surprise him, either. Unless colleges change their policies or the courts clarify the legal issues, "this is going to be on the front burner," he said. Reported in: insidehighered.com, August 11.

## broadcasting

**Washington, D.C.**

A 2004 Federal Communications Commission study that showed locally owned television stations provide more local news than others was ordered destroyed by FCC officials, and only came to light when a copy was leaked to Sen. Barbara Boxer (D-CA).

Three years ago, then-FCC chair Michael Powell launched a proceeding on the effects of local ownership on television news as part of his drive to further deregulate media and allow for even greater consolidation. But the report commissioned under Powell turned out to undermine his argument that consolidation has no ill effects on local news, and, according to former FCC lawyer Adam Candeub, senior managers ordered "every last piece" of the study destroyed.

On September 12, Senator Boxer, armed with the leaked report, questioned current FCC Chair Kevin Martin about it at his renomination hearing.

According to the report, locally owned stations in fact deliver nearly six minutes more of total news and almost five-and-a-half more minutes of local news in a thirty-minute newscast than stations with non-local owners. This adds up to thirty-three more hours of local news a year—a

remarkable figure, and a damning one for big media's allies in the FCC, who are required to protect the public interest and to promote localism.

As the Prometheus Radio Project noted: "Former FCC Chair Michael Powell . . . made many high-sounding pronouncements about the need for media policy to be rooted in empirical evidence. Powell also attempted to separate out the issue of media consolidation from localism, claiming that most of the millions of comments to the Commission stemmed from a concern about local content, not a concern about concentration of ownership into fewer hands."

Martin, who succeeded Powell in 2005 as chair, voted in 2003 for ownership rules that would have dramatically raised ownership caps. The rules were sharply contested by media activists and others, and a federal appeals court struck them down in 2004. Martin told Boxer he hadn't been aware of the report and has promised to keep "an open mind" on media consolidation as the FCC embarks once again on a review of its media ownership rules. The FCC has since posted the full report on its Web site: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-267448A1.pdf

Powell likewise denied any knowledge of the report or responsibility for its suppression. Boxer called on the FCC's inspector general to conduct a formal, independent investigation into the suppression of the study. Reported in: fair.org, September 15.

**Salt Lake City, Utah**

The Utah chapter of the Parents Television Council has filed a petition with the FCC to deny the license of CBS-owned KUTV Salt Lake City. Its offense? Airing an episode of *Without a Trace* featuring a "teen orgy party." The FCC has already proposed fining the station and others for airing the show—the total fine runs into the millions.

CBS stations are fighting the *Trace* fine. In June, CBS affiliates asked the FCC to rescind the fine, arguing, among other things, that there were "no true complaints from actual viewers following the [December 2004] broadcast"—they instead say the complaints came after the complainants saw a clip on the Internet. The stations also argue that the complaints were not filed from the markets where the stations aired the show.

"Broadcasters are accountable to the community they serve and must follow the law to use the public airwaves," said PTC leader Brent Bozell in a statement announcing the license challenge. "It's clear that in this case, one community feels that the owner of this station—CBS—has violated the terms of its broadcast license," he said.

CBS responded in a statement: "As CBS has made clear in previous FCC filings, we don't believe anything in this episode of an award-winning series, on a socially important theme, was indecent. That's why we're vigorously contesting a preliminary FCC decision proposing that CBS be fined for airing it.

"In any event, that proceeding is the proper forum for determining whether the FCC's indecency rules can properly be extended to the airing of a sequence lasting less than a minute in a respected dramatic program, which involved no nudity or graphic simulated sexual behavior.

"We're confident the Commission will agree it doesn't bear on CBS's qualifications as an FCC licensee, or KUTV's record of service to its community. "

The choice of KUTV is twofold at least. It is a CBS-owned station and CBS, points out PTC, continues to challenge indecency rulings, and it is in Utah, where the espisode's airing is "probably more demonstrably in violation of community standards," says PTC spokesman Dan Issett.

In annoucing the move, PTC pointed out that "twenty-six local governments from all over Utah have passed resolutions calling on their citizens and businesses, and all public and private institutions, to adopt family-friendly and child-appropriate standards." Reported in: *Broadcasting and Cable*, August 29.

## Internet

**Washington, D.C.**

The U.S. Department of Justice has stepped up its defense of a proposal to imprison Web site operators who don't label pages containing sexually explicit material. The idea, outlined in an April speech by Attorney General Alberto Gonzales, is approaching a vote in Congress. Even though there have been no hearings, the legislation has been attached to two separate measures—a massive communications bill and a bill to fund large portions of the federal government including the State Department—that are likely to be considered by the full Senate this fall.

The proposed restrictions are no different from requiring multipurpose stores like 7-Eleven to shield pornographic magazines with so-called blinder racks, Larry Rothenberg, an attorney in the Justice Department's Office of Legal Policy, said at a panel discussion hosted by the Internet Caucus Advisory Committee.

"We have what we consider to be a rather modest (proposal) to protect consumers," Rothenberg said. "This is not censorship. It's not a major break with First Amendment principles."

His critics, however, remained unconvinced. "There's no way to avoid vagueness, no way to avoid overbreadth, and, more important, no way to avoid chilling free speech," said Leslie Harris, executive director of the Center for Democracy and Technology. Reported in: CNet News, September 19.

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## PATRIOT Act

**New York, New York**

The American Civil Liberties Union, the New York Civil Liberties Union and an Internet Service Provider that is subject to an FBI gag order have filed new legal papers challenging the reauthorized Patriot Act's National Security Letter (NSL) provision. Included in the documents is a previously unreleased declaration from the "John Doe" plaintiff detailing the personal and professional strain caused by the gag, which was imposed at the time Doe received an NSL.

"The PATRIOT Act dramatically expanded the FBI's authority to monitor the communications and activities of people living in the United States," said Jameel Jaffer, the ACLU lawyer who is lead counsel in the case. "But by permitting the FBI to silence those with direct experience of the new laws, Congress has denied the public any means of ensuring that the new surveillance authorities are being used appropriately and lawfully. The declaration released today is the first statement that John Doe has made since a lawsuit challenging the NSL was filed by the ACLU in April 2004."

According to news reports, the government now issues thirty thousand NSLs every year. The legal documents were originally filed under seal because of the gag provision, and redacted versions were made available under procedures put in place by the court. In the declaration, Doe discusses being prevented from participating in the PATRIOT Act debate that raged across the nation in late 2005 and early 2006.

"Congress was specifically debating whether to amend the NSL statute—the statute I believed was so constitutionally deficient that I was willing to file a federal lawsuit challenging it—but I was prohibited from contacting members of Congress and advocating for changes to law," said Doe. "[T]he gag has compelled me to systematically deceive my friends, family, and girlfriend," added Doe. "I did not like the feeling of being conscripted to be a secret informer for the government, especially because I have doubts about the legitimacy of the underlying investigation."

Also included in the newly released legal papers is a declaration submitted by four librarians who are on the board of Library Connection, a library consortium in Connecticut. The consortium was served with an NSL and along with the ACLU challenged both the letter and the accompanying gag. After many months of litigation, the government abandoned its claim that lifting the gag order on the librarians would compromise national security.

In September 2004, Judge Victor Marrero of the Southern District of New York struck down the NSL provision as unconstitutional, saying that "democracy abhors undue secrecy." In the landmark ruling, Judge Marrero held that indefinite gag orders imposed under the NSL law violate free speech rights protected by the First Amendment. The government appealed Judge Marrero's ruling and argument was heard before the appeals court in November 2005. Before the appeals court could rule, however, Congress amended the law in March. The case is now back before Judge Marrero.

The ACLU argues that the gag provision of the revised NSL statute is still unconstitutional because it gives the FBI the authority to suppress speech without prior judicial review and because it requires courts to defer to the FBI's opinion that secrecy is necessary in cases in which the gag is challenged.

"Time and time again we have seen the dangers in giving the government sweeping power to silence Americans," said ACLU attorney Melissa Goodman. "Sadly, we have learned from experience that the government has, and will continue, to abuse its power to invoke secrecy to silence opposition, rather than protect national security." The legal documents in the Connecticut NSL case were recently unsealed by the government and the courts.

The documents revealed that government attorneys had censored, among other non-sensitive information, whole newspaper articles and direct quotes from Supreme Court opinions that undercut the government's arguments in the case. The ACLU posted those documents online in a feature highlighting the information the government previously claimed could not be made public because of national security reasons. Reported in: ACLU Press Release, September 25.

## privacy

**Washington, D.C.**

United States and European authorities, looking for more tools to detect terrorist plots, want to expand the screening of international airline passengers by digging deep into a vast repository of airline itineraries, personal information and payment data.

A proposal by Homeland Security Secretary Michael Chertoff would allow the United States government not only to look for known terrorists on watch lists, but also to search broadly through the passenger itinerary data to identify people who may be linked to terrorists, he said in a recent interview.

Similarly, European leaders are considering seeking access to this same database, which contains not only names and addresses of travelers, but often their credit card information, e-mail addresses, telephone numbers and related hotel or car reservations.

"It forms part of an arsenal of tools which should be at least at the disposal of law enforcement authorities," said Friso Roscam Abbing, a spokesman for Franco Frattini, vice president of the European Commission and the European commissioner responsible for justice and security.

The proposals, prompted by the summer's British bomb-plot allegations, have inspired a new round of protests from civil libertarians and privacy experts, who had objected to earlier efforts to plumb those repositories for clues.

"This is a confirmation of our warnings that once you let the camel's nose under the tent, it takes ten minutes for them to want to start expanding these programs in all different directions," said Jay Stanley, a privacy expert at the American Civil Liberties Union.

The United States already has rules in place, and European states will have rules by this fall, allowing them to obtain basic passenger information commonly found in a passport, like name, nationality and date of birth. American officials are pressing to get this information, from a database called the Advance Passenger Information System, transmitted to them even before a plane takes off for the United States.

But a second, more comprehensive database known as the Passenger Name Record is created by global travel reservation services like Sabre, Galileo and Amadeus, companies that handle reservations for most airlines as well as for Internet sites like Travelocity.

Each time someone makes a reservation, a file is created, including the name of the person who reserved the flight and any others traveling in the party. The electronic file often also contains details on rental cars or hotels, credit card information relating to travel, contact information for the passenger and next of kin, and at times even personal preferences, like a request for a king-size bed in a hotel.

European authorities currently have no system in place to routinely gain access to this Passenger Name Record data. Frattini, his spokesman said, intends to propose that governments across Europe establish policies that allow them to tap into this data so they can quickly check the background of individuals boarding flights to Europe.

"It is not going to solve all our problems," Abbing said. "It is not going to stop terrorism. But you need a very comprehensive policy."

American authorities, under an agreement reached with European authorities in 2004, are already allowed to pull most of this information from the reservation company databases for flights to the United States to help look for people on watch lists. Members of the European Parliament successfully challenged the legality of this agreement, resulting in a ruling in May by Europe's highest court prohibiting the use of the data after September 30, unless the accord is renegotiated.

But Chertoff said that in addition to simply reinstating the existing agreement, he would like to see it eventually revised so American law enforcement officials had greater ability to search the data for links to terrorists.

Under the current agreement, for example, the United States government can maintain Passenger Name Record data on European flights for three and a half years. But it is limited in its ability to give the data to law enforcement agencies to conduct computerized searches. Those searches could include comparing the passenger data to addresses, telephone numbers or credit card records on file for known or suspected terrorists, Chertoff said.

"Ideally, I would like to know, did Mohamed Atta get his ticket paid on the same credit card," Chertoff said, citing the lead hijacker of the 2001 plots. "That would be a huge thing. And I really would like to know that in advance, because that would allow us to identify an unknown terrorist."

Paul Rosenzweig, a senior policy adviser at the Homeland Security department, said the use of the passenger data would be negotiated with European authorities. "We are handcuffed in what we can do with it now," he said. "It would be a big step forward if we could identify ways in which we can use this information to enhance our ability to detect and prevent terrorism while at the same time remaining respectful and responsive to European concerns regarding privacy."

But the proposals to expand access to this data will be likely to spur objections. Graham Watson, the leader of the Liberal Democrat group in the European Parliament, said that given the previous opposition to the American use of the passenger record data, he expects the plan by Frattini will draw protests. "I think that is unlikely to fly," he said.

The problem, Watson said, is not a lack of information, but the unwillingness of individual European states to share with other countries data on possible terrorists so that it can be effectively used to block their movement internationally.

Stanley of the civil liberties union said that if Chertoff and Frattini continued in the direction they are headed, the government would soon be maintaining and routinely searching giant databases loaded with personal information on tens of millions of law-abiding Americans and foreigners.

But Stephen A. Luckey, a retired Northwest Airlines pilot and aviation security consultant, said those efforts were an essential ingredient in a robust aviation security system. "Even with the best technology in the world, we will never be able to separate the individual from the tools he needs to attack us," said Luckey, who helped airlines in the United States develop a screening system for domestic passengers. "You are not going to find them all. You have to look for the person with hostile intent." Reported in: *New York Times*, August 22.

## copyright

**New York, New York**

The Internet put the music industry and many of its listeners at odds thanks to the popularity of services like Napster and Grokster. Now the industry is squaring off against a surprising new opponent: musicians.

In the last few months, trade groups representing music publishers have used the threat of copyright lawsuits to

shut down guitar tablature sites, where users exchange tips on how to play songs. The battle shares many similarities with the war between Napster and the music recording industry, but this time it involves free sites like Olga.net, GuitarTabs.com and MyGuitarTabs.com, and even discussion boards on the Google Groups service like alt.guitar.tab and rec.music.makers.guitar.tablature, where amateur musicians trade "tabs"—music notation especially for guitar—for songs they have figured out or have copied from music books.

On the other side are music publishers like Sony/ATV, which holds the rights to the songs of John Mayer, and EMI, which publishes Christina Aguilera's music.

"People can get it for free on the Internet, and it's hurting the songwriters," said Lauren Keiser, who is president of the Music Publishers' Association and chief executive of Carl Fischer, a music publisher in New York.

So far, the Music Publishers' Association and the National Music Publishers' Association have shut down several Web sites, or have pressured them to remove all of their tabs, but users have quickly migrated to other sites. According to comScore Media Metrix, an Internet statistics service, Ultimate-Guitar.com had 1.4 million visitors in July, twice the number from a year earlier.

The publishers, who share royalties with composers each time customers buy sheet music or books of guitar tablature, maintain that tablature postings, even inaccurate ones, are protected by copyright laws because the postings represent "derivative works" related to the original compositions, to use the industry jargon.

The publishers told the sites that if they did not remove the tablatures, they could face legal action or their Internet service providers would be pressured to shut down their sites. All of the sites have taken down their tabs voluntarily, but grudgingly.

The tablature sites argue that they are merely conduits for an online discussion about guitar techniques, and that their services help the industry. "The publishers can't dispute the fact that the popularity of playing guitar has exploded because of sites like mine," said Robert Balch, the publisher of Guitar Tab Universe (guitartabs.cc), in Los Angeles. "And any person that buys a guitar book during their lifetime, that money goes to the publishers."

Balch, who took down guitar tabs from his site in late July at the behest of the music publishers, added that, "I'd think the music publishers would be happy to have sites that get people interested in becoming one of their customers."

Cathal Woods, who manages Olga.net, one of the pioneer free tablature sites, said he had run the site for fourteen years with the help of a systems administrator, "and we've never taken a penny." Woods, who teaches philosophy at Virginia Wesleyan College in Norfolk, said Olga.net had earned an undisclosed amount of money by posting ads on Google's behalf, but he said that money had paid for bandwidth and a legal defense fund.

Anthony DeGidio, a lawyer for Olga.net, said he was still formulating a legal strategy, while also helping decide whether the site could pay licensing fees "in the event that's required." For now, though, the site remains unavailable to users.

Because the music tablature sites are privately held, they do not disclose sales figures, and because industry analysts generally do not closely follow tablature sites, it is unclear how much revenue they generate. But with the Internet advertising market surging, almost any Web site with significant traffic can generate revenue.

Google also dabbles in tablature through its Google Groups discussion board service, in which guitar players trade tabs they have figured out by listening to the songs, or by copying tabs found elsewhere. A Google spokesman, Steve Langdon, said Google would take down music tablature from its Groups service if publishers claimed the materials violated copyright agreements and if Google determined that infringement was likely. Under the Digital Millennium Copyright Act, Web hosts may review, case by case, a publisher's claims regarding instances of copyright infringement.

To hear music publishers tell it, though, the tablature sites are getting away with mass theft. Keiser, of the Music Publishers' Association, said that before these sites started operating in the early nineties, the most popular printed tablatures typically sold 25,000 copies in a year. Now the most popular sell 5,000 copies at most.

But Mike Happoldt, who was a member of the nineties band Sublime and whose music is sold in sheet music books, said he sympathized with the tablature sites. "I think this is greed on the publishers' parts," said Happoldt, who played guitar on Sublime's hit "What I Got." "I guess in a way I might be losing money from these sites, but as a musician I look at it more as a service," said Happoldt, who now owns an independent record company, Skunk Records. "And really, those books just don't sell that much for most people."

Assuming a tablature site musters the legal resources to challenge the publishers in court, some legal scholars say they believe publishers may have difficulty arguing their complaints successfully. Jonathan Zittrain, the professor of Internet governance and regulation at Oxford University, said "it isn't at all clear" that the publishers' claim would succeed because no court doctrine has been written on guitar tablature.

Zittrain said the tablature sites could well have a free speech defense. But because the Supreme Court, in a 2003 case involving the extension of copyright terms, declined to determine when overenforcement or interpretation of copyright might raise a free-speech problem, the success of that argument was questionable. "It's possible, though, that this is one reason why guitar tabs generated by people would be found to fit fair use," Zittrain said, "or would be found not to be a derivative work to begin with."

*(continued on page 323)*

log on to

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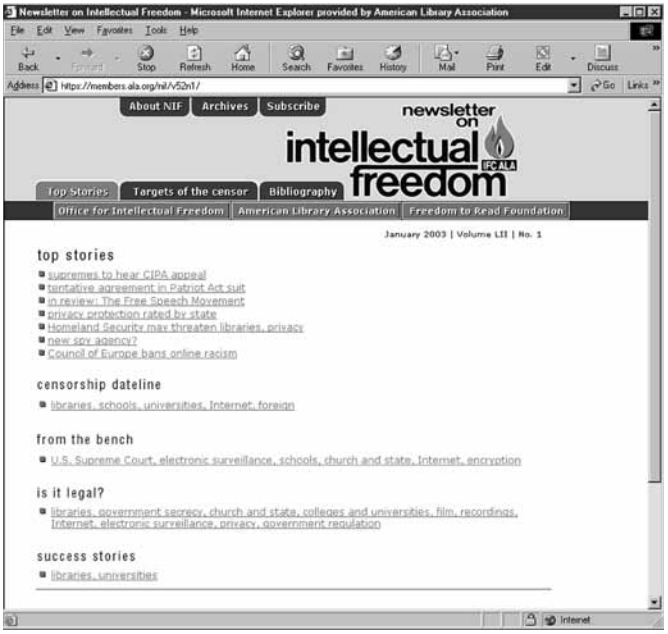


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## libraries

**Ocala, Florida**

Members of the Marion County Commission voted 4–1 August 2 to retain *Messages to the World: The Statement of Osama bin Laden* in county libraries. The action was in response to a June 22 appeal by complainant Brian Creekbaum after his reconsideration request was denied by Marion County Public Library Director Julie Sieg.

Creekbaum admitted at the meeting that he filed the appeal to force commission members to vote on the current library policy, which he opposes. The commission established a policy in July 2005 requiring the relocation to an adults-only area of materials that commissioners deem inappropriate for patrons younger than eighteen. As of mid-August, no items had been moved, despite several challenges—the most recent of which was a January complaint against Vladimir Nabokov's *Lolita*.

Marion County Commission Chairman Jim Payton said that Creekbaum seeks "purely and simply to embarrass and discredit the board of commissioners because we saw fit to dissolve the library advisory board [in April 2005]." Creekbaum was among a group of anti-censorship activists awarded the Florida Library Association's Intellectual Freedom Award in 2001 for defending access to Robie Harris's *It's Perfectly Normal* at the main library in Ocala. Reported in: *American Libraries* online, August 18.

**Schaumburg, Illinois**

While Mel Gibson didn't earn any popularity votes from Schaumburg Township District Library trustees September 19, the board unanimously agreed to let his posters remain on display in the library's main branch.

A brief discussion about the Hollywood movie star was prompted after two patrons requested that the library remove a poster portraying Gibson as part of a literacy campaign. A few library trustees said they disapproved of the anti-Semitic remarks Gibson reportedly made during a July 28 drunk driving arrest in Malibu, California, but they were less keen on engaging in censorship, which they agreed would be the precedent set by the library if it removed the poster.

Library Trustee Robert Frankel, who is Jewish, said that regardless of his personal feelings about Gibson and his comments, the poster should stay. "It is censorship" to remove the poster, he said.

The poster that drew the complaint hangs in the east corridor of the library. It is one of the American Library Association's line of Celebrity Read posters encouraging reading. With the word "READ" across the top, the poster portrays Gibson with a book in hand. Ironically, the book is George Orwell's novel *1984* about a totalitarian society, as Library Board President Anita Forte-Scott pointed out during the censorship discussion.

Library Executive Director Michael Madden also noted that there are two other posters of Gibson in the audio visual department, including one of the actor playing Scottish militant William Wallace in the film *Braveheart*. By taking down one or all three of the Gibson posters, library officials said they would open the door to removing all kinds of objectionable material from the library.

"I think we get ourselves into so much trouble taking down this poster because there are so many other posters," Madden said, who recommended that the board take no action on the request.

Trustee Robert Lyons questioned why the request was even discussed by the board. "The decision as to whether posters go up or come down is a staff decision," he said.

No library patrons attended the meeting to comment on the poster. Reported in: *Pioneer Press*, September 22.

**Louisville, Kentucky**

The Greater Clark County school board voted 7-0 August 8 to reject a grandmother's request to ban a series of horror stories from its elementary school libraries. Beth Dorsey had asked the school system to remove the "Scary Stories" books written by Alvin Schwartz.

Dorsey said her granddaughter, a first-grader at Utica Elementary, has been afraid of the dark and "plagued by nightmares" since last March, after another student who got a book from Utica Elementary's library gave it to her. The girl couldn't read the book because it's written for

older children. But the pictures, which include sketches of a witch and spiders coming out of a hole in a face, caused the girl to be "imprisoned by fear," Dorsey told the board.

She added that an older grandchild who was assigned to write a report about one of the books didn't want to read it but thought she would get into trouble if she protested.

Dorsey said the volume she especially abhorred is called *Scary Stories 3*. But she wanted all four or five volumes in the series banned because, she said, they depict cannibalism, murder, witchcraft and ghosts, and include a story about somebody being skinned.

A petition objecting to the series was signed by 175 people, Dorsey said. She also wanted horror stories by another author, Richard Young, removed.

Doug Chinn, principal at Utica Elementary, said before the meeting that a committee of parents, teachers and others had reviewed Dorsey's initial request to get rid of the book, but it was rejected because they were considered appropriate for older elementary students. Chinn also said the committee pointed out that parents should review what their children are reading.

After the committee's decision, Dorsey appealed to Superintendent Thomas Rohr, who reached a conclusion similar to the committee's, noting that the books had been on library shelves for years. He recommended that the board reject the appeal and that the books stay at Utica. The board adopted Rohr's recommendation with little discussion.

Dorsey said she was surprised by the unanimous outcome. "How could this have happened?" she asked. "I can't believe it." She said she hoped to pursue her campaign at the state level.

One of the books, *More Scary Stories To Tell in the Dark,* is a one-hundred-page paperback published in 1981. The stories focus on horror, some with humorous endings. One, for example, describes the terror of a man who sought shelter from a storm in an abandoned church and thought he was surrounded by ghosts when a lightning flash revealed white figures around him. Then one of the figures "went BAA-A-A," the story says.

Another, called "Wonderful Sausages," is more gruesome. It's about a butcher who kills his wife and grinds her up to mix with other ingredients and sell as a "special sausage."

The "Scary Stories" series topped the ALA list of the one hundred most frequently challenged books from 1990 to 2000. Reported in: *Louisville Courier-Journal*, August 9.

**Benton, Pennsylvania**

School directors looking to keep some books out of the Benton High School library gave up their fight September 11. Directors Evy Lysk and Nicole Shultz said the school already has an adequate policy governing book choice. They just didn't know it.

Directors were still at odds over whether that policy was followed this year. But several directors, district Superintendent Gary Powlus and retired librarian Ann Weatherall agreed that it was. "There is no issue on the table. There is no motion on the table. There is nothing to be considered," board President Dennis Threlkeld said to the applause of many of the fiftey parents and students who attended the board meeting. "The policy was followed."

The 480 books that were being kept in boxes while the board debated rules regarding language, violence and sexual content were put on the shelves later in the week.

That was welcome news to many of the students in the high school's "accelerated reader" program and their parents. Senior Kerri Christie said there aren't enough books available now that challenge older students. She said she's reading books well below her grade level because that's all that's left.

Parent Ginger Notargiacomo said her daughter Morgan, a senior, is reading a book tagged with a ninth grade reading level. Notargiacomo told the board she was fed up. She said she planned to file a lawsuit against the board if the books were not made available immediately. "You are not meeting the needs of our students, and I've had it," Notargiacomo said.

Not all in attendance at a meeting were opposed to a stricter set of rules. Parent Bob Ridall said he doesn't want to keep any books out of the hands of students as long as they want to read them and their parents approve. But he doesn't want free access for kids, either. Ridall asked the board to separate books with objectionable content and require students to get their parents' permission before checking out books from that area. He said movies and computer software are categorized by how appropriate they are for kids of specific ages. The school could do something similar with books.

Jan O'Rourke of the Pennsylvania Library Association said Ridall's idea would not work. "It's illegal for librarians to restrict books because of their content," said O'Rourke, who attended the meeting on behalf of the library association.

Parent Sandy Marinos said if the library must provide kids access even to books with sexual content, violence and foul language, it might as well stock racy magazines on its shelves, too. "Why don't we have *Playboy* and *Hustler*?" Marinos said.

O'Rourke responded that a school librarian "would have to be an idiot" to order *Playboy* or *Hustler*.

Parent Janet English encouraged the board to refrain from setting any rules or limits. She said free access has helped her kids become voracious readers. Her daughter, Erin, a junior, has read just about every novel in the high school library and many of those in the Bloomsburg Public Library, she said. Her nine-year-old son is already reading

books normally assigned to eighth-graders, she and Erin said. Limiting what books they could read would only hold them back academically, English said.

Although they pulled their proposed rules regarding content, Shultz and Lysk still argued that the books were not ordered properly because the superintendent had not reviewed them all, as policy requires. But Powlus and Director Lanny Conner said it was appropriate for Powlus to assign that work to someone else. In this case, the librarian, a teacher and a principal were all involved in choosing and reviewing the books. "It's impossible for any superintendent to look at 480 books and justify, first, that they are educationally appropriate, and second, that they are age-appropriate," Powlus said.

Notargiacomo said the directors arguing that policy wasn't followed were using that as a stall tactic to keep the books they object to off the shelves. "We're tired of it," Notargiacomo said. Reported in: *Press-Enterprise* online, September 12.

**Farmington, Utah**

The board of the Davis County Library voted unanimously August 22 to retain the illustrated fantasy book *Voyage of the Basset* in the young adult collection. "We don't rate books and never will," trustee Mike Gann asserted. "Our job is to make things available."

Complainant Valerie Mills objected to the book in June after her five-year-old son borrowed it from the children's section, where it was originally shelved, and showed her the illustrations it contains of topless mermaids and other partially clothed mythical creatures—drawings his teenage cousins told him about. "They knew of, and could go quickly to, the pages with the nudity," Mills said.

"The question to me is not whether the book has a good story line, but does it sexually stimulate young boys?" self-described pornography-addiction therapist Rod Jeppsen said at the board meeting. Explaining that the group Citizens for Decency had asked him to evaluate *Voyage of the Basset*, he explained, "What we normally don't consider pornography, a child may get sexually aroused by."

Mills said she was comfortable with the board's decision since the Davis County Library offers parents the option of limiting their youngsters' borrowing privileges to the children's section or to young adult.

Stating that it's good to have a healthy understanding of both human anatomy and mythology, *Voyage of the Basset* illustrator and author James C. Christensen expressed astonishment at the opposition to his 1996 book. "It was never my intent to cause any problems for people," he said. Christensen is a retired Brigham Young University art professor and cochair of the Mormon Arts Foundation. Reported in: *American Libraries* Online, August 25.

## schools

**Beaverton, Oregon**

A Beaverton School District review committee has recommended that science fiction giant Ray Bradbury be kept on the district's reading list. The committee said September 20 that Bradbury's short story, "The Veldt," should continue to be read in school. The story prompted complaints from a middle school parent who thought its language and plot were inappropriate for students.

The seven-member committee's recommendation on "The Veldt," which is part of Bradbury's *The Illustrated Man* anthology, will be forwarded to a district administrator for a final decision. "The Veldt," which runs about twenty pages, was published by Bradbury in 1951 as the first in the collection of eighteen science fiction stories.

The plot involves the use of an artificial nursery, a place where the children's parents place them to keep them in a happy environment. When the children use the nursery to create an African world of predators, the parents talk about taking the landscape away. The children retaliate by locking their parents inside the nursery; it's made clear that they were killed by lions.

During an interview, Kristi Roberts, who challenged the work, said her daughter was in a sixth-grade humanities class at Stoller Middle School last year when "The Veldt" was used as part of the curriculum. Roberts said she initially objected to swear words used in the story. The word "damn" is used in several places throughout, and Roberts felt it inappropriate to have the teacher read aloud portions of the story containing the word. But, Roberts said, "as I read it, there were so many other concerns."

Those included the children plotting murders of their parents and later witnessing it with "big smiles on their faces."

"This isn't a good way of problem-solving," said Roberts. She said her daughter, now in the seventh grade, attended class during the first week that "The Veldt" was read and talked about, but was excused for the second week. Her biggest concern was that the story offers no consequences for the children's actions. It also sends the wrong message to young people, she said.

"I do think it can influence them and give them ideas on how to do this," she said, regarding the parents' death in the story.

During the committee meeting, both Kristi Roberts, and her husband, Tracy, said they didn't think the piece was appropriate for students at any district grade level.

In the end, the committee, composed of middle school administrators, teachers and a parent (none of whom were associated with Stoller Middle School), agreed that they would vote to retain, remove or modify the story.

Rachael Spavins, a parent and volunteer coordinator at Cedar Park Middle School, said she read it as a lesson on how technology has impacted the nuclear family. Spavins

said her own sixth-grade daughter saw it as a warning that too much television and computers are bad for you. In the end, said Spavins, it came down to the amount of trust placed in the judgment of teachers.

"Fortunately, I have a huge amount of faith in the staff in the district," she said.

Teacher David Slater said he felt Bradbury's piece was a warning that when interpersonal relationships are taken out of the family, evil is introduced. "I too saw this as a cautionary tale and a really rich piece for discussion," said Jenny Takeda, a district library specialist.

However, Tracy Roberts noted that if the book were a motion picture shown in school, students would have to have permission to see it. "If this was a movie, in my mind it would be rated PG-13," he said. "Literature isn't rated that way and at what point do we draw the line?"

Although there was brief discussion on whether works of literature read in the schools should have warnings on them, the idea was dismissed. Alexander Perrins, a district regional administrator, said the review committee's decision would go to Sarah Boly, district superintendent of teaching and learning.

After the decision, Kristi Roberts said she was disappointed but not totally surprised, having been warned that it is difficult to have such works removed. Reported in: *Beaverton Valley Times*, September 21.

## colleges and universities

**Durham, New Hampshire**

The University of New Hampshire has refused to fire a tenured professor whose views on September 11 led many politicians in the state to demand his dismissal. William Woodward, a professor of psychology, is among those academics who believe U.S. leaders have lied about what they know about September 11, and were involved in a conspiracy that led to the massive deaths on that day, setting the stage for the war with Iraq. The *Union Leader*, a New Hampshire newspaper, reported on Woodward's views and quoted him (accurately, he says) saying that he includes his views in some class sessions.

The newspaper then interviewed a who's who of New Hampshire Republican politicians calling for the university to fire Woodward. U.S. Sen. Judd Gregg was quoted as saying that "there are limitations to academic freedom and freedom of speech" and that "it is inappropriate for someone at a public university which is supported with taxpayer dollars to take positions that are generally an affront to the sensibility of most all Americans."

State legislators chimed in, demanding Woodward's dismissal and threatening to consider the issue when they next review the university's budget. In some respects, the political reactions mirrored those in Wisconsin, where lawmakers lined up to urge the University of Wisconsin at Madison to fire Kevin Barrett, who shared Woodward's views and is an adjunct teacher in the fall semester. The university let Barrett's course go ahead, although as a nontenured adjunct, he has no assurance of work after this semester.

While Wisconsin conducted a study before announcing that Barrett would be allowed to teach, the University of New Hampshire's reaction was quick in backing its professor. There are no plans to take any action against Woodward and officials said it would be inappropriate to do so.

"What we're saying is that we support and are committed to academic freedom," said Kim Billings, a university spokeswoman. "We may not agree with Professor Woodward, but he is entitled to his opinion."

Woodward said he was gratified by the support. He said he mentions his views on 9/11 maybe once or twice in semester-long courses he teaches on political psychology and the psychology of race. He said that when he discusses his views, he makes clear to students that his views "are controversial" and that most people disagree. Local press reports, quoting students of a variety of political views, backed Woodward's summary of his class approach on the issue.

A self-described "aging hippie," Woodward, sixty-one, has taught at New Hampshire for thirty-one years. He said he's never tried to hide his political views, and that he was active in protesting the Vietnam War. He said he's never before had politicians demanding that he be fired. "It's a little unsettling, but I am feeling empowered. I'm just one person—and I'm gratified if anything I could do would bring the discussion out into the open."

Roger Bowen, general secretary of the American Association of University Professors, had harsh words for New Hampshire politicians who called for Woodward to be fired. "That some legislators apparently believe they have an obligation to criticize the content of faculty classroom instruction is of enormous concern to the AAUP. The U.S. Supreme Court has held repeatedly that academic freedom is a First Amendment right of professors and at least six federal appellate courts have followed Supreme Court rulings," he said.

"So long as the faculty member teaches within his or her discipline and is careful to teach the truth as set by the highest standards of scholarship within their discipline, they and their universities should not be subjected to political intrusions. This rule applies even in highly charged times like today. Professors outside the classroom should speak truth to power as their conscience dictates and inside the classroom they should speak the truths of their discipline. Based on the press reports I have read, it appears that Professor Woodward exemplifies both of these professional desiderata," Bowen added. Reported in: insidehighered.com, August 29.

**Tom's River, New Jersey**

Sometimes justice really does win out, at least partially. Take the case of Karen Bosley, a tenured journalism professor at Ocean County College in New Jersey who has been faculty adviser to the college's newspaper for thirty-five years. For most of that time, she was allowed to do her job without interference, and the newspaper won some seventy awards.

But after Jon Larson was selected as the college's fourth president in 2000, the newspaper ran articles critical of him and his administration. One took issue with his decision to spend $77,000 on what the newspaper deemed a lavish inauguration, another suggested he was running the school in an arbitrary fashion. The newspaper was especially critical of his decision to change the period set aside for extra-curricular activities to late in the afternoon, when fewer students were free to participate.

Last December, the college trustees voted against renewing Bosley's contract as the newspaper's adviser for the 2006–07 school year. She was also reassigned from her job as journalism professor to professor of English, a subject she had only limited experience in teaching.

Complaining that she was being pressured to retire, Bosley, sixty-four, sued and so did three of her students, who said her removal as faculty adviser amounted to censorship. Dr. Larson said Bosley's ouster had nothing to do with the articles about him and was solely related to performance. But last summer a federal court judge temporarily barred the college from removing Bosley as the newspaper's adviser, saying the ouster would have a "chilling effect" on expression, and in September the administration announced it would allow her to return to the newspaper.

But the college has not reinstated Bosley to her position as a journalism professor, and has not explained why she was removed in the first place. Reported in: *New York Times*, October 1.

**Clemson, South Carolina**

Some of best-selling author Ann Patchett's friends told her not to come to Clemson University after a controversy erupted over the school's decision to make her book *Truth and Beauty* required summer reading for incoming freshmen. But instead, Patchett said she just changed the "nice" speech she usually gives.

The book tells the story of Patchett and a friend, Lucy Grealy, who struggled with the effects of cancer throughout her life and later dealt with drug addiction. Critics, including Commission on Higher Education member Ken Wingate, said it glamorized deviant behavior and had inappropriate sexual content.

The university defended the assignment, saying the book was appropriate and had been "unfairly judged by many who have read only a handful of excerpts." Patchett told the freshmen that those critics "want to protect you from me." But through their actions those critics assume the people they are trying to protect have little intellect and no filter through which to evaluate what they experience, Patchett said.

She asked the students if they should be protected from other authors like William Faulkner, Ernest Hemingway or Toni Morrison, whose works also touch on controversial themes.

"Don't ever let anyone tell you what you are allowed to read," Patchett said.

When Patchett let the students ask questions, one of them asked how many times Patchett had cheated on her husband, implying that the book shows she is the type of person who would do that. "I don't think that judging people harshly, especially if you have not walked in their shoes, is a good thing or a right thing to do," she replied.

Some students booed the question, but afterward, Patchett said the student should be admired for having the "gumption" to stand up and say what was on his mind. "It's all part of a dialogue," she said.

Freshman Tamara Dekine of Georgetown said she was first a little iffy about the book, but found she enjoyed it the more she read. "It opened my eyes and helped me realize things I can utilize in my friendships," she said.

Patchett said this was the first time her book has created controversy. In 2005, it received an award from the American Library Association as the adult book most appropriate for high school readers. Reported in: Associated Press, August 23.

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*(from the bench . . . from page 302)*

from being held in contempt of court for refusing to disclose confidential sources or unpublished material.

Former *New York Times* reporter Judith Miller was held in contempt and jailed for eighty-five days last year for refusing to say who told her that Valerie Wilson, the wife of Bush administration critic Joseph Wilson, was a CIA operative. This summer, a federal appeals court ruled that the government could examine phone records of Miller and a second *Times* reporter in another leak investigation.

Josh Wolf, a part-time freelance journalist, has been in federal prison since August 1 after another federal judge in San Francisco held him in contempt for refusing to turn over videos of a protest rally in which an attempt allegedly was made to burn a police car. Meanwhile, legislation that would establish a federal shield law is stalled in Congress.

Fainaru-Wada and Williams wrote articles in 2004 quoting closed-door testimony by baseball's Jason Giambi, sprinter Tim Montgomery and other athletes saying they had been supplied performance-enhancing drugs by the Bay Area Laboratory Co-Operative. Fainaru-Wada and Williams

also reported that Bonds testified that he received substances from BALCO, but that he believed the substances were flaxseed oil and arthritis balm.

Five defendants, including BALCO founder Victor Conte, later pleaded guilty to supplying performance-enhancing drugs. Separate grand juries now are investigating the disclosure of testimony to the reporters and the possibility that Bonds committed perjury when he denied knowingly using steroids.

Disclosure of the athletes' testimony, which had been kept secret by prosecutors, prompted a congressional investigation and new steroid-testing policies in professional baseball.

Williams, fifty-six, and Fainaru-Wada, forty-one, are veteran reporters who have been with the *Chronicle* since 2000. Bronstein, in his statement, stressed the value of their work on the BALCO case.

"We believe they performed a service by creating public awareness of the use of performance-enhancing drugs by some of the best athletes in the world," the editor said. "As a result of their work, significant reforms have been instituted from Major League Baseball to high school sports."

Federal prosecutors have disagreed—saying it was their investigation, not the news articles, that raised public awareness of the issue—and have argued that, in any event, the alleged value of the reporting does not excuse the reporters from testifying about the leak.

A grand jury supervised by the U.S. attorney's office in Los Angeles issued subpoenas, which were received by the reporters and the newspaper on May 5, demanding the sources of the transcripts. In his ruling, White noted that another federal judge issued orders in March 2004, before the first *Chronicle* story appeared, prohibiting the BALCO defendants as well as government personnel from disclosing grand jury transcripts and other confidential material to the news media.

Prosecutors say everyone with legal access to the transcripts has signed a sworn statement denying that he or she was a source of the leak. The government "has exhausted all reasonable alternatives" to summoning the reporters, White said, as their testimony "would appear to be the only firsthand evidence" of the source's identity.

While confidential sources often play an essential role in helping the press expose the workings of government, the judge said, the grand jury and its rules of secrecy also serve an important function in investigating crimes. He said the Supreme Court, in 1972, and the Ninth U.S. Circuit Court of Appeals, in 1993, have ruled that journalists have no constitutional right to withhold evidence from a grand jury.

The *Chronicle's* lawyers have argued that a 1996 Supreme Court ruling allowed federal judges to follow the trend of state laws and recognize a need for confidentiality in certain professions—psychotherapy, the clergy or the press—that could outweigh the government's need for grand jury testimony.

But White said neither the Supreme Court nor the Ninth Circuit, whose rulings are binding on federal judges in California, has backed away from refusing to recognize a journalist's right to remain silent before a grand jury. Reported in: *San Francisco Chronicle*, August 16.

## material witnesses

**Boise, Idaho**

A federal judge in Idaho has ruled that former attorney general John D. Ashcroft can be held personally responsible for the wrongful detention of a U.S. citizen arrested as a "material witness" in a terrorism case.

U.S. District Court Judge Edward J. Lodge, in a ruling issued September 27 dismissed claims by the Justice Department that Ashcroft and other officials should be granted immunity from claims by a former star college football player arrested at Dulles International Airport in 2003.

Attorneys for the plaintiff in the civil suit, Abdullah al-Kidd, said the decision raises the possibility that Ashcroft could be forced to testify or turn over records about the government's use of the material witness law, a cornerstone of its controversial legal strategy after the September 11, 2001, terrorist attacks.

Robin Goldfaden, one of Kidd's attorneys at the American Civil Liberties Union, said the case "could be the launching point for more fully documenting how the government is misusing the material witness statute."

The law was intended to give authorities the power to detain witnesses they feared might flee before testifying. But after the September 11 attacks, the government used it to hold seventy men, nearly half of whom were never called to testify in court, according to a study by the ACLU and Human Rights Watch.

Kidd—a Kansas native who was known as Lavoni T. Kidd before converting to Islam—was arrested in March 2003 as he prepared to board a flight to Saudi Arabia, where he was planning to pursue a doctorate in Islamic studies. Federal prosecutors claimed he was a flight risk crucial to the prosecution of a fellow University of Idaho student, Sami Omar al-Hussayen.

Kidd was imprisoned for sixteen days in three states and then placed under restrictive court supervision for more than a year. But Kidd was never called to testify against Hussayen, who was eventually acquitted of computer-related terrorism charges.

While not deciding on the veracity of Kidd's claims, Lodge, who was appointed to the federal bench in 1989 by President George H.W. Bush, ruled that Ashcroft could be found personally liable in the case because of his role in establishing and enforcing the government's material-witness policies. Reported in: *Washington Post*, September 29.

*(is it legal? . . . from page 315)*

Doug Osborn, an executive vice president with Ultimate-Guitar.com said his site violated no laws because its headquarters were in Russia, and the site's practices complied with Russian laws.

Jacqueline C. Charlesworth, senior vice president and general counsel of the National Music Publishers' Association, would not comment on the legality of specific sites, including Ultimate-Guitar, but said she had seen no international licensing agreements that might make free United States distribution of guitar tablature legal.

Online discussion boards have been thick with comments from guitar tablature fans, looking for sites that are still operating and lamenting the fate of sites they frequented. One user of the guitarnoise.com forums, who calls himself "the dali lima," said he had no doubt that the music publishers would win the battle.

"Hopefully we will get to a place where the sheet music/tab will be available online just like music—$0.99 a song. The ironic thing might be that a service like that—with fully licensed music/tab offered at a low per song rate—might actually benefit guitar players by providing the correct music/tab and not the garbage that we currently sift through."

A small handful of sheet music sites now sell guitar tablature. Keiser, of the Music Publishers' Association, estimated that, including overhead costs, tablature could cost about $800 per song to produce, license and format for downloading.

Musicnotes, an online sheet music business based in Madison, Wisconsin, is considering a deeper push into guitar tablature, said Tim Reiland, the company's chairman and chief financial officer. The site has a limited array of tablature available now for about $5 a song, and it also offers tablature as part of $10 downloadable guitar lessons.

But Reiland said that with the music publishers "dealing with the free sites," and a stronger ad market, his business might be able to lower the cost of its guitar tabs. "Maybe we could sell some of the riffs to Jimmy Page's solo in 'Stairway to Heaven' for a buck, since that's really what the kids want to learn anyway," Reiland said.

Low prices are only part of the battle, though, Reiland said. The free tablature sites often host vibrant communities of musicians, who rate each other's tablature and trade ideas and commentary, and Musicnotes would have to find a way to replicate that environment on its site. Furthermore, these communities often create tablature for songs that have little or no commercial value, he said.

"Less than 25 percent of the music out there ends up in sheet music because sometimes it just doesn't pay to do it," Reiland said. "So the fact that someone comes up with a transcription themselves just because they love that song and want to share it with people, there's some value to that." Reported in: *New York Times*, August 21.

*(levy . . . from page 286)*

prosecution for criticism of the government. Nor did he have anything kind to say about Justice Black, whom he called "innocent of history when he did not distort it or invent it."

Indeed, Professor Levy disdained judges on the right and the left who molded history to their advantage. "They look for something to confirm a hunch or to illustrate a point they have already decided on other grounds," he wrote in a 1988 book on constitutional interpretation.

Leonard Williams Levy was born in Toronto on April 9, 1923. He earned undergraduate and graduate degrees at Columbia University and taught at Brandeis University and Claremont Graduate School. Other than his wife, he is survived by two daughters, Wendy and Leslie, both of Ashland, and seven grandchildren.

In 1986, Professor Levy published *The Establishment Clause: Religion and the First Amendment*, a consideration of the extent of the constitutional separation of church and state. His conclusion: "Robert Frost notwithstanding, something there is that loves a wall."

He was also an active participant in Reagan-era debates over a mode of constitutional interpretation known as originalism, popularized by Attorney General Edwin Meese, III, and Judge Robert H. Bork, whose nomination to the Supreme Court was defeated in 1987. Originalism looks to the text and original understanding of the Constitution as the only sure guide to its meaning.

Professor Levy called that approach a disservice to the grand, open-textured phrases in the Constitution, formulations that he said required fresh interpretation by each new generation. "The framers," he wrote, "had a genius for studied imprecision."

The *New York Times Book Review* picked his *Original Intent and the Framers' Constitution* as one of the sixteen best books of 1988, praising its "rigorous scholarship and vigorous wit." The book demonstrated, the editors wrote, that "judges must go right on interpreting the spacious words of the Constitution as they have always done."

Professor Levy had a gloomy side, and he sometimes despaired over whether his mountain of scholarship had an impact. The Supreme Court's recognition of his books, for instance, gave him no pleasure, he said in a 1980 interview.

"Two of my books"—those on the Fifth and First Amendments—"have been cited ten or twelve times each and not once accurately, significantly or responsibly," he said. "If the court, or the justices of the court, botches what I say in those books, how can I have contributed to any public understanding? I haven't." Reported in: *New York Times*, September 1.

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