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

ISSN 0028-9485 September 2006 ☐ Vol. LV ☐ No. 5 ☐ www.ala.org/nif

nothing but the facts

The following is an edited transcript of a program, "Nothing But the Facts: Why Preventing the Discussion of Intelligent Design in Science Classes is Not a Free Speech Issue," held at the ALA Annual Conference in New Orleans and sponsored by the ALA Intellectual Freedom Committee, the Association of American Publishers Freedom to Read Committee, and the American Booksellers Foundation for Free Expression or ABFFE.

I am Kent Oliver, chair of the Intellectual Freedom Committee for the American Library Association. I would also like to introduce Judy Platt. Judy is the staff director of the AAP Freedom to Read Committee. Unfortunately, Lisa Drew, chair of Freedom to Read Committee, and Chris Finan, president of ABFFE, are unable to join us today. With us today, however, are the Reverend Barry Lynn and Michael Ruse. It was a pleasure to eat lunch today with these gentlemen and I can guarantee you that you're in for a very interesting program. Barry will make an opening address and Michael will react. At the end of their presentations, they will accept questions from the audience. It is now my pleasure to introduce the speakers.

Since 1992, Barry W. Lynn has served as executive director of Americans United for the Separation of Church and State, a Washington, D.C.-based organization dedicated to the preservation of the First Amendment's religious liberty provisions. In addition to his work as a longtime activist and lawyer, Barry is an ordained minister in the United Church of Christ, which offers him a unique perspective on church and state issues. An accomplished speaker and lecturer, Barry appears frequently on television and radio broadcasts to offer analyses of first amendment issues. He is a regular guest on National Public Radio's *All Things Considered, Morning Edition,* and *Talk of the Nation.* Barry began his professional career working at the national office of the United Church of Christ, including a

(continued on page 260)

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

in this issue

nothing but the facts 221

John Does speak 223

IFC report to ALA Council.....224

FTRF report to ALA Council 225

Colorado begins process to fire Churchill.....226

in review: *Censoring Culture* 227

flag amendment narrowly fails.....228

another public broadcasting battle.....276

Caywood named to FTRF honor roll 277

censorship dateline: libraries, Internet, foreign 229

from the bench: U.S. Supreme Court, libraries, schools, colleges and universities, privacy, film and video.....235

is it legal?: libraries, schools, student press, colleges and universities, "state secrets," broadcasting, Internet, privacy 241

success stories: libraries, university, foreign.....255

targets of the censor

books

Beloved.....231
Cassell Dictionary of Slang.....231
The Chocolate War 231
The Color Purple 231
Cuban Kids 230
The Da Vinci Code [Egypt, India] 265
Harry Potter and the Half-Blood Prince.....229
In the Night Kitchen.....231
Junie B. Jones and Some Seaky, Peaky Spying 231
Manufacturing Consent [Turkey] 234
Reluctantly Alice 231
The Spoken Word Revolution.....257
Vamos a Cuba 230
A Visit to Cuba 230

periodicals

Cavalier Daily [U of Virginia] 244
Collegiate Times [Virginia Tech U.].....244
New York Times.....249

film and video

Braveheart.....256
The Passion of the Christ 256
Saving Private Ryan.....256

(ISSN 0028-9485)

Newsletter on Intellectual Freedom is published bimonthly (Jan., Mar., May, July, Sept., Nov.) by the American Library Association, 50 E. Huron St., Chicago, IL 60611. The newsletter is also available online at www.ala.org/nif. Subscriptions: $70 per year (print), which includes annual index; $50 per year (electronic); and $85 per year (both print and electronic). For multiple subscriptions to the same address, and for back issues, please contact the Office for Intellectual Freedom at 800-545-2433, ext. 4223 or oif@ala.org. Editorial mail should be addressed to the Office of Intellectual Freedom, 50 E. Huron St., Chicago, Illinois 60611. Periodical postage paid at Chicago, IL at additional mailing offices. POSTMASTER: send address changes to Newsletter on Intellectual Freedom, 50 E. Huron St., Chicago, IL 60611.

John Does allowed to speak, receive belated Downs Award

Nearly one year after receiving a National Security Letter from the FBI demanding computer records for one of their member libraries, four librarians on the executive board of the Library Connection—a nonprofit consortium of one academic and twenty-six public libraries in central Connecticut—are able to discuss freely some aspects of the only known time the USA PATRIOT Act has been invoked in a library setting. The Justice Department officially abandoned efforts to obtain the records June 22, after concluding independently that the implied threat the FBI was investigating had no merit.

One month earlier, a federal appeals court lifted the gag order that prevented the four, known collectively as John Doe up until that time, from revealing that they were the ones who filed a lawsuit, *Doe* v. *Gonzales*, through the American Civil Liberties Union that objected to the government's request for records and challenged the constitutionality of the gag order.

The gag order prevented them from receiving the 2005 Robert Downs Intellectual Freedom Award presented by the University of Illinois Graduate School of Library and Information Science. The award was accepted on their behalf in January by Judith Krug, director of the American Library Association's Office for Intellectual Freedom, at the ALA Midwinter Meeting in San Antonio.

The four John Does of the Library Connection—Executive Director George Christian, President Barbara Bailey, Vice President Peter Chase, and Secretary Janet Nocek—got another chance June 26 at ALA Annual Conference in New Orleans, where they received the award to a standing ovation by some two hundred attendees.

Before the presentation, Chase explained that the FBI dropped the case "largely because of the avalanche of publicity, most of it complimentary to us. . . . The FBI saw the situation as grim," he added, "because the next time we'd meet in court, they would not be able to shuffle us off to a locked room sixteen miles away" as they had during the appeals court proceedings in August 2005. During a later hearing, the four had to agree not to enter the building together, not to speak or sit next to each other, and not to speak or even have eye contact with their ACLU attorneys.

"First the government abandoned the gag order that would have silenced four librarians for the rest of their lives, and now they've abandoned their demand for library records entirely," said Ann Beeson, associate legal director of the ACLU. "While the government's real motives in this case have been questionable from the beginning, their decision to back down is a victory not just for librarians but for all Americans who value their privacy."

The government has revealed that its interest was in a threatening e-mail message. FBI Assistant Director John Miller said that "somebody got on a library's computer and sent a message to a government agency, saying 'I'm telling you about this terrorist threat.'" However, the agency was ultimately able to discount the threat using other means and has pronounced the investigation complete.

In a two-paragraph letter to the ACLU, Kimberly K. Mertz, an agent in the New Haven Division of the Federal Bureau of Investigation, said the agency would no longer seek to enforce the order and would not try to keep its contents secret. The letter was dated June 14.

Miller said the agency had issued the National-Security Letter because it was trying to track down the identity of someone who used a library computer to issue "an alleged terrorist threat." The Internet Protocol address of the computer was supported by Library Connection, he added. He declined to elaborate on the threat, but said the FBI had closed the case and concluded that the threat was not credible.

He criticized Library Connection officials for failing to comply with the order, saying the FBI's probe into the terrorist threat was "less efficient" because of the group's stand.

He also faulted library groups and the ACLU for using the National-Security Letter to foment opposition to the PATRIOT Act. "The discussion has been couched in such a way as to create the impression that the FBI was seeking library patrons' records, interested in what books they were reading, interested in violating privacy," said Miller. "The fact is that this is just a modern-day version of somebody pulled a firebox and sent in a false alarm, and we wanted to look at the firebox and see if we could determine whom."

He said the agency sought the information through a National-Security Letter and not through a search warrant because it wanted to keep details about the threat under seal. "In a counterterrorism case, this was the prescribed, most logical investigative tool," Miller said. "If you go for a search warrant, you're basically announcing to everybody there that you have traced it to that computer, and that you're seeking the individual who used it."

The ACLU posted on its Web site June 26 the National-Security Letter that Library Connection received. The one-page order asked for "all subscriber information, billing information, and access logs of any person or entity" associated with a specific Internet Protocol address on February 15, 2005, between 4 and 4:45 p.m. The order was dated May 19, 2005, and signed by Michael J. Wolf, an agent who worked in the FBI's New Haven bureau. Library Connection did not receive the order until July 13, 2005, according to a statement released by the ACLU.

Each of the four Library Connection members said the most frustrating thing for them was not being able to speak up about the PATRIOT Act when it was reauthorized in March by Congress. Chase said at the award presentation that one frightening aspect of the PATRIOT Act is that "it does not have to be aimed at criminals or terrorists; it can be aimed at anyone for any reason." Reported in: *American Libraries* Online, June 27; *Chronicle of Higher Education* online, June 27. □

IFC report to ALA Council

The following is the text of the ALA Intellectual Freedom Committee's Report to the ALA Council delivered by IFC Chair Kenton Oliver at the 2006 ALA Annual Conference in New Orleans, on June 28, 2006.

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

- Under "Information," this report covers RFID in Libraries: Privacy and Confidentiality Guidelines, Resolution in Support of Online Social Networks, Questions and Answers on Privacy and Confidentiality, Surveillance in America, Festschrift to Honor Gordon M. Conable, Free Exchange on Campus, and Strategic Thinking.
- Under "Actions," this report discusses "Resolution on National Discussion on Privacy," "Resolution Affirming Network Neutrality," and "Resolution to Commend the John Does of the Library Connection."
- Under "Projects," this report covers both new and continuing projects. New projects include the Contemporary Intellectual Freedom Series, Guidelines for Graphic Novels, ALA Library 2.0 Project, and Law for Librarians. Continuing projects include Confidentiality in Libraries: An Intellectual Freedom Modular Education Program, Lawyers for Libraries, the LeRoy C. Merritt Humanitarian Fund, and the 2006 Banned Books Week.

Information

RFID in Libraries: Privacy and Confidentiality Guidelines. The IFC has spent over a year gathering comments from ALA leaders and members on its guidelines for implementing RFID technologies in libraries. The latest draft, reflecting these comments, now entitled "RFID in Libraries: Privacy and Confidentiality Guidelines," focuses on helping libraries both to benefit from RFID deployment and to protect the privacy of library users. Additional comments were gathered both prior to the Annual Conference and by the IFC, OITP, and LITA Technology and Access Committee at their program, "Tiny Trackers: How to Implement RFID Technologies in Libraries Without Giving Up Our Principles."

The IFC thanks all interested persons who shared their comments. After discussing all the comments received on its draft guidelines, the committee further refined them. Since the guidelines are not policy, the IFC is submitting them (CD#19.2) to Council for its acceptance.

The Intellectual Freedom Round Table and the ACRL Intellectual Freedom Committee endorsed these guidelines in principle on June 23, 2006. The committee anticipates distributing the guidelines widely by the 2007 Midwinter Meeting.

Two appendixes are attached to the Guidelines. Appendix A, "Resolution on Radio Frequency Identification (RFID) Technology and Privacy Principles," was adopted by Council on January 19, 2005, and requested the development of guidelines for the implementation of RFID technology in libraries. Appendix B, part of the Request For Information developed by the San Francisco Public Library, provides a helpful list of sample questions to ask when talking to vendors about privacy and their RFID products.

Resolution in Support of Online Social Networks. On May 11, Reps. Mike Fitzpatrick (R-Pa.) and Mark S. Kirk (R-Ill.) introduced H.R. 5319, "Deleting Online Predators Act." If passed, this legislation would require most schools and libraries to block access to a broad array of useful Web resources and applications, including "commercial Web sites that let users create Web pages or profiles or offer communication with other users via forums, chat rooms, e-mail or instant messaging," or lose e-rate discounts. MySpace and other social-networking sites are the potential targets, as well as a wide array of other content and technologies such as instant messaging, online e-mail, wikis, and blogs. These and similar Web sites would become inaccessible to minors, an age group that comprises many prolific and ardent users of social networking sites and services (e.g., Facebook, LiveJournal, Friendster, Orkut, Blogger, AOL and Yahoo instant-messaging features, etc.)

Like the Children's Internet Protection Act (CIPA), the legislation would affect schools and libraries that receive e-rate discounts for Internet access or connections. In addition, the bill would require the FCC to publish an annual list of "commercial social networking websites and chat rooms that have been shown to allow sexual predators easy access to personal information of, and contact with, children."

The IFC supports COL's resolution opposing such legislation and urges Council to adopt it.

Questions and Answers on Privacy and Confidentiality. The IFC developed this Q&A to work in conjunction with *Privacy: An Interpretation of the Library Bill of Rights*, adopted by the ALA Council on June 19, 2002. The committee revised it on April 14, 2005. At this conference, the IFC revised it, this time to address the topic of third-party services:

How does the library's responsibility for user privacy and confidentiality relate to the use by library users of third party services in accessing their own circulation records?

Free third-party services are now available that remind library users of due dates and circulation fines via e-mail or RSS feeds. Libraries should advise users about the risks associated with providing library card numbers, passwords, or other library account information to any third party. These risks include changes in the privacy policies of the third-party service without customer notification, and disclosure of the user's library circulation records or

(continued on page 270)

FTRF report to ALA Council

The following is the text of the Freedom to Read Foundation's (FTRF) report to the ALA Council, delivered by FTRF President John W. Berry on June 27 at the ALA Annual Conference in New Orleans.

As President of the Freedom to Read Foundation, I am pleased to report on the Foundation's activities since the 2006 Midwinter Meeting:

Meeting "John Doe"

For the past year, the Freedom to Read Foundation provided critical legal support to the American Civil Liberties Union (ACLU) in its representation of "John Doe," the Connecticut librarian(s) and member(s) of the American Library Association challenging the constitutionality of the National Security Letter (NSL) provision of Section 505 of the USA PATRIOT Act. The NSL was served on "John Doe" last summer. When the ACLU decided to mount a direct challenge to the gag order imposed upon "John Doe," FTRF's counsel, Theresa Chmara, authored *amicus curiae* briefs that eloquently argued for Doe's First Amendment right to speak out about his/her/their experience during the ongoing debate on the reauthorization of the USA PATRIOT Act. Even though the ACLU won an order lifting the gag order, government appeals kept the gag order in place and prevented "John Doe" from being heard when Doe would have provided crucial information about the NSL's chilling effect on constitutional rights.

Only after Congress voted in March to reauthorize the USA PATRIOT Act did the government withdraw its objections to lifting the gag order, allowing us to meet for the first time the four courageous and principled librarians who collectively were "John Doe": George Christian, executive director of Library Connection, a computer consortium serving many Connecticut libraries; Barbara Bailey, president of Library Connection's Board of Directors; Peter Chase, the board's vice president; and Janet Nocek, board secretary.

The foundation worked closely with the ACLU over the past eight months, providing legal support for the four librarians. On May 24, 2006, the Second Circuit Court of Appeals dismissed the government's appeal and remanded the case back to the lower courts after the government informed the court that it no longer opposed the four librarians' decision to reveal their identities.

Yesterday, Monday, June 26, at a terrific forum moderated by ALA President Michael Gorman, the four Does introduced themselves and discussed the personal and professional impact of having been served an NSL and being bound by the gag order. They also made the announcement, for the first time, that the federal government had withdrawn its request to seek the records. This meant that the case, *Doe* v. *Gonzales* (Connecticut), is now effectively mooted. The gag order, which had been partially lifted, is now completely lifted. We are still waiting to see what court documents will remain under seal and for how long.

There remains an ongoing case challenging the NSL: *Doe* v. *Gonzales* (New York). As you recall, Judge Marrero of the Southern District of New York issued an order in September 2004 that struck down the NSL statute, ruling that the FBI's power to issue a NSL without judicial review and under a seal of absolute secrecy violated the Constitution. The appellate court instructed Judge Marrero to reconsider his decision in light of the changes made to the NSL statutes by the legislation reauthorizing the USA PATRIOT Act. FTRF will continue to support the plaintiff and the ACLU in their efforts to challenge the use of NSLs. Notably, Second Circuit Judge Richard Cardamone took issue with the government's claim that a permanent ban on speech is sometimes permissible under the First Amendment. In his concurring opinion, he said "a perpetual gag on citizen speech of the type advocated so strenuously by the government may likely be unconstitutional."

Peter Chase is an old friend to the Freedom to Read Foundation and a longtime champion of intellectual freedom, including serving as the Intellectual Freedom Committee chair for the Connecticut Library Association. Speaking afterwards about his experience, he told the press, "As a librarian, I believe it is my duty and responsibility to speak out about any infringement to the intellectual freedom of library patrons."

The foundation salutes Peter, Barbara, George, and Janet for their principled stance. Their counsel—that we have a duty to speak out about efforts to infringe upon our freedom—is counsel we can all take to heart, as those who would eviscerate our library collections and open library records to government surveillance continue to threaten our right to read freely. FTRF will continue to stand firm and speak out against those efforts.

Defending the First Amendment and the Right to Read Freely

The Freedom to Read Foundation's newest legal action, *Beard* v. *Banks*, seeks to vindicate the rights of prisoners to receive information behind prison walls. FTRF has joined with the Association of American Publishers (AAP), the American Booksellers Foundation for Free Expression (ABBFE), the Publishers' Marketing Association (PMA), the Reporters' Committee for Freedom of the Press, and the Prison Legal News to file an *amicus* brief with the U.S. Supreme Court in support of Ronald Banks, a prisoner challenging the Pennsylvania Department of Corrections' blanket policy barring some long-term prisoners' access

(continued on page 273)

Colorado begins process to fire Ward Churchill

The University of Colorado at Boulder's interim chancellor announced June 26 that he has begun the process to fire Ward Churchill, the controversial professor who once compared some victims of the September 11, 2001, terrorist attacks to Nazi bureaucrats.

Eighteen months ago, politicians and conservative critics of academe began calling for Churchill to be fired from his tenured post after an essay he wrote in 2001 became more widely known. In it, he described people who worked in the financial-services industry in the World Trade Center as "little Eichmanns."

While plenty of people thought that was reason enough to fire the professor, Churchill is not being dismissed for those comments. Instead, the firestorm over his essay led to increased scrutiny of his academic work and charges that he had plagiarized and fabricated material in his research.

In May, an investigative committee issued a one hundred twenty-five-page report that found a pattern of research misconduct in Churchill's work and an unwillingness on his part to accept responsibility. The committee split on the recommended punishment.

Philip P. DiStefano, the interim chancellor, agreed that Churchill should be dismissed. On June 26, he gave the professor a notice of intent to dismiss him. In a written statement announcing his decision, DiStefano said faculty members "enjoy the freedom of expression that is the foundation of what they do in their scholarly pursuits."

"But, as is true with all liberties enjoyed by all Americans, with freedom comes responsibility," he said. "Appropriately, we in the academy are held to high standards of integrity, competence, and accuracy, at the same time we freely engage in spirited, unimpeded discourse in the 'marketplace of ideas.'"

Under the university's rules, Churchill has ten days to request that the dismissal be referred to the Faculty Senate Committee on Privilege and Tenure. A panel would then hold hearings and then make a recommendation to the University of Colorado System president. Churchill has previously said that he would sue the university if it tried to fire him and has argued that the misconduct investigation was merely a pretext to punish him for constitutionally protected speech.

While Churchill will remain on Colorado's payroll pending any final action against him, DiStefano said that Churchill had been relieved of all teaching and research duties. When the case moves to the top governance levels of the university, Churchill is expected to be fired, and Colorado's board faces intense pressure to dismiss him. Gov. Bill Owens told Colorado reporters that he hoped the latest developments would speed the day when "we can soon say good riddance to Ward Churchill once and for all."

David Lane, Churchill's lawyer, said that he would file an appeal with the faculty panel. But Lane said he assumed Churchill would lose that round. "Once we lose there, we'll file in court," he said.

In his statement, DiStefano stressed that he was acting on the recommendation of two faculty panels that found Churchill to have engaged in misconduct. In May, a special panel found that Churchill had engaged in repeated, intentional academic misconduct—plagiarism, fabrication, falsification, and more. The panel had spent months investigating allegations against Churchill and considering what an appropriate response would be to findings of wrongdoing.

In June, Boulder's Standing Committee on Research Misconduct affirmed that finding, setting the stage for DiStefano's action. (Churchill, who has consistently denied wrongdoing and said he was being punished for his political views, hasn't answered all of the charges against him, but did issue a statement about them.)

Members of the two panels had differing views on whether Churchill should be fired, although a majority backed the statement that the findings of wrongdoing were serious enough to justify dismissal. Generally, those at Colorado raising questions about dismissal have not been defending Churchill's conduct, but instead have noted the process by which he came to be investigated. Many of the writings now being subject to scrutiny have been around for years—as have some of the allegations against him.

But Colorado only investigated them after the huge public furor last year over Churchill's writings, and especially over his statements about 9/11—writings that also were not particularly new. Colorado officials have acknowledged that it would be wrong to fire Churchill because of those statements, leading some to question the legitimacy of firing him after an inquiry that was started because of those statements.

University officials—and the faculty members who investigated Churchill—have said that what matters the most is whether Churchill committed research misconduct, not why that misconduct came to light.

DiStefano said he came to the conclusion that Churchill should be fired after reviewing the two faculty committees' reports, conferring with other Colorado administrators, and meeting with Churchill and his lawyer. He also said the actions he was proposing were consistent with the values of academic freedom.

"A university is a market place of ideas—a place where controversy is no stranger and opinionated discourse is applauded," he said. But he added that "with freedom comes responsibility."

"Appropriately, we in the academy are held to high standards of integrity, competence and accuracy, at the same time we freely engage in spirited, unimpeded discourse in the 'marketplace of ideas,'" he said.

DiStefano did not directly respond to those who have criticized the idea of firing a professor after starting an

investigation prompted by public comments that could not warrant firing. But DiStefano did comment on statements many conservative commentators have made linking Churchill's conduct to the field of ethnic studies. Churchill's writings focus on the treatment of American Indians, and he is a member of Colorado's ethnic studies department.

The faculty committees that examined Churchill both said that their concerns about him did not extend to his department or discipline, DiStefano noted. Rather, he said, their findings were about "the research misconduct of one faculty member only." DiStefano said Boulder officials would be working in the months ahead to correct any misconceptions that the Churchill controversy has created about ethnic studies.

Roger Bowen, general secretary of the American Association of University Professors, said he had mixed feelings about the announcement. Colorado's faculty committees and interim chancellor appear to have taken numerous steps to assure due process for Churchill and to express support for academic freedom, Bowen said. "If there is reason for concern, it stems from the political rancor that prompted the inquiry and the hostile intervention by political figures, including the governor," he added.

Cary Nelson, the president of the American Association of University Professors, praised the investigative committee's report and said it raised serious issues about Churchill's professional integrity. However, the timing of the investigation is problematic, Nelson said, comparing it to a situation in which police enter a residence with a warrant to investigate one type of crime but discover evidence of a separate crime. "I don't think that one can just absolve him of misconduct because the investigation was triggered by his public speech," Nelson said.

The long-term effect of Churchill's case on academic freedom may depend on how the war in Iraq proceeds and whether more terrorist attacks occur in the United States, Nelson said. "My worry is not that under the present conditions that this will set off a series of efforts to get rid of tenured faculty," he said. "It does potentially risk encouraging impatience with faculty who are among the loyal opposition."

David Horowitz, a conservative activist who campaigns against what he sees as liberal bias in academe, offered a blunt response when told that administrators had decided to fire Churchill: "What else could they do?"

Horowitz said he hoped that Churchill's dismissal would be "the beginning of a national effort by universities to tighten up their academic standards." Those who worry that the misconduct investigation was prompted by statements that should be protected by the First Amendment have their priorities misplaced, he said. "The real question is why it took a public outcry to draw attention to such an academic nightmare," Horowitz said. Reported in: *Chronicle of Higher Education* online, June 27; insidehigh ered.com, June 27. □

in review

Censoring Culture: Contemporary Threats to Free Expression. Edited by Robert Atkins and Svetlana Mintcheva. The New Press. 2006. 353 p. $19.95.

Censoring Culture presents a bleak view on the future of free artistic expression. It does not focus on overt government censorship but instead "expands the notion of censorship beyond the acts of removing a photograph from an exhibition or canceling a performance to include a much larger field of social conditions and practices that prevent artists' works of all kinds from reaching audiences or even from being produced." (p. xvi)

The authors believe that this form of censorship is all the more invidious because it has not received enough critical attention. In fact, "[w]hen existing analysis was insufficient . . . [they] have commissioned essays or conducted interviews with key authorities in relevant fields." (p. xvii) The thirty four contributions are mostly short—the longest is around twenty pages—and range from personal self-analysis to philosophical treatises complete with the requisite endnotes. The book lacks an index, but the price is very affordable at $19.95.

Censoring Culture is divided into five major sections. The first, "Economics," clearly shows that the triumph of market capitalism has not been good for artists. The government, foundations, and museums finance "safe" art and care little about innovative contemporary artists. Corporations use lawsuits and the withdrawal of advertising to stifle negative commentary whether truthful or not. Musical creativity based upon sampling runs afoul of copyright law. Book publishing is all about the financial bottom line rather than nurturing writers at the same time as the chain bookstores eliminate the independents by using their economic clout to demand the highest discounts.

The section on "the Internet" is the most positive in the volume with a defense of "hacking culture" and a contribution on "How the IP Guerrillas Won." I cannot help but believe, however, that these are Pyrrhic victories and that recent developments show the trend to domesticate the Internet by eliminating or making irrelevant its uncensored elements.

The next two sections, "Protecting Children" and "Cultural Diversity & Hate Speech," share the theme of how laudable goals are used to justify censorship. In the first section, several contributors point out the lack of objective research to justify the claims of censors that violent video games and pornography have severe negative effects upon children. The four personal essays about the persecution of photographers as child pornographers for taking pictures that would have been considered innocent a few years ago are chilling.

My personal favorite in the entire volume is "Child Pornography Law and the Proliferation of the Sexualized Child" in which Amy Adler explains how these laws have

forced artists, judges, and juries to learn to think like pornographers in order to judge what is acceptable from what is not. The section on cultural diversity and hate speech considers such issues as the use of the word "nigger," collecting prejudiced items, and Nazi imagery before concluding with the ultimate blandness of President Clinton's proposed national voluntary test whose goal was to offend no one including eliminating the concepts of "snow and freezing winters" as a case of "regional bias." (p. 292)

The final section on "Self-Censorship" is potentially the most interesting. Several artists and writers, including Judy Blume, recount their experiences in self-censoring their work to remove objections to its presentation or publication. A psychoanalyst, Janice Lieberman, makes the perceptive point that ground breaking artists such as Picasso and Pollock were often innovators because they were narcissistic enough to avoid self-censorship, a trait that also made them not very nice people. What bothers me in this section is the lack of historical perspective. Self-censorship to reach an audience and to achieve commercial success has been part of the creative process for centuries and, as several contributors note, may ultimately lead to more accessible, if not more creative, art.

As with many collections, I find it hard to give an overall evaluation of *Censoring Culture*. While the introduction emphasizes culture with a small c (artists and writers broadly defined), many contributions treat Culture with a large C (society as a whole) so that the focus of the volume is not entirely clear. Most intellectual freedom advocates will already be aware of the large C issues and may find some of the small c issues too narrow, such as the status of alternative spaces for artists. Overall, with some exceptions, the personal narratives and interviews are the strongest parts of the book as they put a human face on the effects of covert censorship. Perhaps the greatest value of the volume is bringing together the disparate strands of nongovernmental censorship to show how they collectively have woven a net that entangles free expression both in the arts and in society at large.—*Reviewed by Robert P. Holley, Professor, Library & Information Science Program, Wayne State University, Detroit, Mich.* □

flag amendment narrowly fails in Senate vote

A proposed Constitutional amendment to allow Congress to prohibit desecration of the flag fell a single vote short of approval by the Senate June 27, an excruciatingly close vote that left unresolved a long-running debate over whether the flag is a unique national symbol deserving of special legal standing.

The 66–34 vote on the amendment was one vote short of the 67 required to send the amendment to the states for potential ratification as the 28th Amendment. It was the closest proponents of the initiative have come in four Senate votes since the Supreme Court first ruled in 1989 that flag burning was a protected form of free speech.

The opponents—thirty Democrats, three Republicans, and an independent—asserted that the amendment would amount to tampering with the Bill of Rights in an effort to eliminate relatively rare incidents of burning the flag. They said it violated the very freedoms guaranteed by the symbolism of the flag.

"This objectionable expression is obscene, it is painful, it is unpatriotic," said Senator Daniel Inouye, a Hawaii Democrat who won the Medal of Honor for his service in World War II. "But I believe Americans gave their lives in many wars to make certain all Americans have a right to express themselves, even those who harbor hateful thoughts."

Proponents of the amendment, which was backed by fifty-two Republicans and fourteen Democrats, disputed the assertion that burning the flag was a form of speech. They said the amendment was simply an effort to reassert congressional authority after a misguided court ruling. They said it was particularly appropriate to act now when American troops are at risk.

"Old Glory lost today," said Senator Bill Frist, the majority leader, who scheduled the debate and vote in the week before Congress broke for its Fourth of July recess.

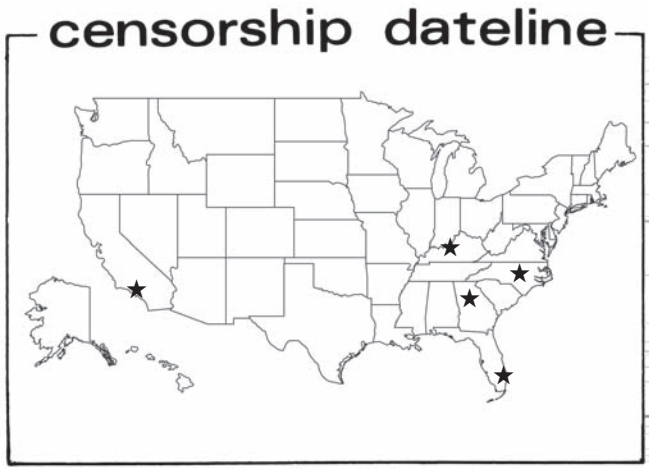
The full text of the proposed amendment is, "The Congress shall have power to prohibit the physical desecration of the flag of the United States."

The vote is likely to be an issue in the congressional elections in November, and Senator Orrin G. Hatch, the Utah Republican who was the chief sponsor of the amendment, predicted the minority who opposed it would be held accountable by the voters. "I think this is getting to where they are not going to be able to escape the wrath of the voters," Hatch said.

Eleven senators facing re-election this year opposed the amendment and several are facing potentially difficult races, including Lincoln Chafee of Rhode Island, a Republican, and the Democrats Daniel K. Akaka of Hawaii, Robert C. Byrd of West Virginia, Maria Cantwell of Washington, and Joseph I. Lieberman of Connecticut.

The leader of the Citizens Flag Alliance, which had been running newspaper advertisements on the issue in selected states, said it would continue to press the issue and make sure voters know where their senators stand on the amendment. "I think this is the right thing to do, and I am going to keep at it until we run out of money or they tell me to

(continued on page 276)



libraries

Lake Los Angeles, California

The Wilsona School District board has approved new library book-selection guidelines in the wake of trustees' controversial decision to remove twenty-three books including the latest Harry Potter book from a list recommended for a school library. 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 selected instances, an occasional inappropriate word may be deleted with white-out rather than rejecting the entire book," the policy said.

"We realize there might be a story about police, but that's not violent crime, that's police doing good," Superintendent Ned McNabb said. "There's no way you can take the judgment out of it. You frame it better so it's easier to know what the guidelines are."

The new guidelines, which were approved June 22, were developed by a committee consisting of McNabb, board President Sharon Toyne and trustee Patricia Greene. The board voted February 16 to remove the twenty-three books from a list of 68 that had been recommended by a parent-teacher committee for the Vista San Gabriel Elementary School library. The list had been forwarded for board approval.

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.

Rejected titles included three bilingual Clifford the Big Red Dog books, *Harry Potter and the Half-Blood Prince*, *Disney's Christmas Storybook*, and two books from the Artemis Fowl series, whose namesake character was described in reviews as a boy-genius anti-hero and criminal mastermind.

At a March board meeting, trustees indicated that they planned to bring some of the axed books back for approval, such as the Clifford and Disney books. They said these books were not objectionable but were nevertheless lumped in with the rejected books. The board rejection upset some parents and surprised school officials.

It was unclear whether Harry Potter books would be allowed under the new guidelines. "In my opinion, that's one of the tougher judgments. Most would and some might not," McNabb said. "The general consensus you hear from critics (of the books) is that the later versions, they believe, are much darker in content than earlier versions."

The new policy 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 states.

"Middle school materials may have a somewhat broader range of information. 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 okay."

Revisions included adding the words "socially appropriate" to one criterion. It now states books should have a "Fair balanced socially appropriate portrayal of people with regard to race, creed, color, national origin, sex and disability."

The guidelines also now state that all books must comply with a section of state education law, titled the "Hate Violence Prevention Act," which states, "Each teacher shall endeavor to impress upon the minds of the pupils the principles of morality, truth, justice, patriotism, and a true comprehension of the rights, duties, and dignity of American citizenship, and the meaning of equality and human dignity, including the promotion of harmonious relations, kindness toward domestic pets and the humane treatment of living creatures, to teach them to avoid idleness, profanity, and falsehood, and to instruct them in manners and morals and the principles of a free government."

The policy also states that "materials must not promote nor discourage any particular religious doctrine."

The policy also now allows for parents to selectively allow books on certain subject areas, such as Halloween, Pokemon, or the "Goosebumps" series. Reported in: *Los Angeles Daily News*, July 10.

Miami, Florida

A controversial children's book about Cuba—and similar books from the same series about other countries—will be removed from all Miami-Dade school libraries after a school board vote June 14 that split Hispanic and non-Hispanic members in an incendiary political atmosphere.

Only the Cuba book, *Vamos a Cuba*, and its English-language counterpart, *A Visit to Cuba*, were re-viewed through the district's lengthy appeals process. Some board members who voted for the ban admitted they had never seen other books in the series, which features twenty-four nations including Greece, Mexico, and Vietnam—none of which had been formally objected to by anyone.

"Basically it paints life in those twenty-four countries with the same brush, with the same words," said board chairman Agustín Barrera, who said he read most of the books.

As part of the 6–3 vote, the board overruled two review committees and Superintendent Rudy Crew, all of whom had decided to keep the book. The decision directed Crew to replace the series with more detailed books.

Even longtime district officials could not remember any previous banning of a book by the school board. And the American Civil Liberties Union said it was prepared to file a lawsuit challenging the decision, which the school board's own attorney said would be "costly."

"This unfortunate decision is a throwback to a Miami of several decades ago, when the battle about freedom in Cuba was waged too frequently about First Amendment rights in Miami," said Howard Simon, executive director of the ACLU of Florida. He said the district should work to collect more material with different viewpoints, not remove the controversial books.

District officials were unsure how many copies of other books in the series there were, but schools hold forty-nine copies of the Cuba book, which became the target of controversy earlier this year when the father of a Marjory Stoneman Douglas Elementary student complained about the book's rosy portrayal of life in Fidel Castro's Cuba.

"The Cuban people have been paying a dear price for forty-seven years for the reality to be known," said Juan Amador Rodriguez, a former political prisoner in Cuba who filed the original complaint, which was denied, and subsequent appeals. "A thirty-two-page book cannot silence that."

But in his final appeal to the school board, the majority of members decided its inaccuracies and omissions made it inappropriate for its intended kindergarten-to-second-grade audience.

"A book that misleads, confounds, or confuses has no part in the education of our students, most especially elementary students who are most impressionable and vulnerable," said board member Perla Tabares Hantman.

Opponents of the ban said it was tantamount to censorship of politically unsavory speech—something specifically barred by the U.S. Supreme Court. "Next week we will have another complaint about another book from another group," said board member Evelyn Greer. "If this standard is applied, we will go through every book in the system."

Legal experts said the board's action appeared to be unconstitutional. A 1982 Supreme Court case ruled that school boards have wide discretion to determine which books go on shelves, but "that discretion may not be exercised in a narrowly partisan or political manner."

The high court's ruling in that New York case, *Board of Education* v. *Pico*, cited an example of an inappropriate book-banning—"if an all-white school board, motivated by racial animus, decided to remove all books authored by blacks or advocating racial equality and integration."

Courts typically give school boards more discretion in choosing instructional materials—and Simon, the ACLU director, said he could envision "a perfectly reasonable judgment being made" to remove a book that was not considered age-appropriate. However, he said, "the court was adamant that books couldn't be removed because of content."

Amador Rodriguez's appeal was originally limited to the Cuba book at Marjory Stoneman Douglas Elementary, but board member Ana Rivas Logan amended the bill to cover the entire series and the entire district.

"We are rejecting the professional recommendation of our staff based on political imperatives that have been pressed upon members of this board," said Greer, who joined Solomon Stinson and Martin Karp in voting against the removal.

Board member Frank Bolaños tried to persuade the board to remove another controversial book, *Cuban Kids*, which, he said, portrays life in post-revolutionary Cuba as a veritable paradise. But that effort was defeated in a 6–3 vote, with the majority unwilling to act unless a parent files a formal complaint. Activists at the meeting promised to begin that process immediately at one of the handful of schools that has *Cuban Kids*.

The board did approve a bill directing Crew to reevaluate the procedures school libraries use to buy books in the first place. The existing rules, which require books to meet fifteen criteria, are almost entirely ignored because librarians do not have the time to screen every book they buy. Their purchases are usually based on short reviews in professional journals.

"This book should never have been allowed to be inserted in our public school libraries," said Bolaños, the book's most outspoken critic on the board. "That is crystal clear."

The emotional and political storm surrounding the debate became impossible to ignore in a community so deeply steeped in Cuban culture. It bared the exile community's considerable political heft as well as persistent suspicion that other groups remain ignorant of—or even hostile to—the deep sensitivity toward Cuba's image and struggles.

At a news conference, Bolaños exemplified that tension when he described the decision his colleagues faced, saying, "They will have a choice to either define themselves on the side of truth and with the Cuban community or on the side of lies and against the Cuban community."

Of the six board members who voted to remove the book, three are facing re-election this fall—Hantman, Barrera, and Marta Pérez—and Bolaños said he will resign from the board to run for state Senate.

Board member Robert Ingram voted for the ban, but only to invite the ACLU's lawsuit so the issue could be resolved by the courts, he said. In an impassioned speech, he said threats from the exile community left him thinking board members "might find a bomb under their automobiles" if they voted to keep the book. "There's a passion of hate," Ingram said. "I can't vote my conscience without feeling threatened—that should never happen in this community any more."

The board's student advisor, who does not have a vote, said students should not be denied access to controversial books. She said *Vamos a Cuba* could be used to teach students how to question the accuracy and bias of information they find in books and online. "We can use this book as a tool," said Arielle Maffei, who graduated from MAST Academy and plans to attend Vanderbilt University this fall. "We should have the option to look at that book." Reported in: *Miami Herald*, June 15.

Gwinnett County, Georgia

The Georgia Board of Education will hold a public hearing October 3 on whether to keep Harry Potter books on the shelves in Gwinnett County schools. The hearing comes after an appeal by Laura Mallory of Loganville, who asked that the popular books about a boy wizard be banished from her children's school library.

The Gwinnett board voted in May to keep the books because they promote critical thinking skills and imagination. Mallory, who filed her initial complaint in September, has argued that the stories promote and glorify witchcraft.

Gwinnett's board reached its decision to keep the books after a public hearing on the matter and after media review panels from J. C. Magill Elementary, where Mallory's three children attend, ruled that the books should remain. The panels were composed of parents, teachers and community members.

At a public hearing on April 20, educators, parents, and students passionately showed their support or opposition for the Harry Potter series. Both the local school and system media committees recommended that the Harry Potter books stay in schools' libraries. Hearing officer Su Ellen Bray echoed their support in her recommendation, in which she included ten reasons she thought the books should not be removed.

At its May 11 meeting, the Gwinnett Board of Education upheld the decisions of the committees by voting that the Potter books should remain. Reported in: *Gwinnett Daily Post*, June 13, July 2.

Wake County, North Carolina

A North Carolina school district has banned a dictionary of slang under pressure from one of a growing number of conservative Christian groups using the internet to encourage school book bans across the U.S. Jonathon Green, who compiled the 87,000 entries in the *Cassell Dictionary of Slang*, which was published last year, said that North Carolina is the only place he knows of where the book cannot be used in schools.

A Wake County school official said that five books, including the dictionary, were formally challenged. The others were listed as *The Chocolate War* by Robert Cormier, *Junie B Jones and Some Sneaky, Peaky Spying* by Barbara Park, *Reluctantly Alice* by Phyllis Reynolds, and *In the Night Kitchen* by Maurice Sendak. School officials acted after pressure from Called2Action, a local Christian activist group.

Some parents also were reportedly upset that their children were required to read books such as *The Color Purple* by Alice Walker, and *Beloved* by Toni Morrison, on the grounds that the books contain "vulgar and sexually explicit language."

"I'm very flattered," said Green. "It's not exactly book-burning but, in the great tradition of book censorship, there never seems to be the slightest logic to it." He said that there were around eighty words in the dictionary that could sum up his reaction. The word that he would use for those who had pushed for the ban, he said, was "wowser", a 1910 Australian term for a "Bible-banging" puritan. Reported in: *The Guardian*, June 23.

Internet

Frankfort, Kentucky

As if there were not already enough problems for Gov. Ernie Fletcher of Kentucky, who has been indicted in a political patronage case, he now has political bloggers and First Amendment lawyers after him, too.

The watchdog group, Public Citizen, said June 22 that it might sue Fletcher, a first-term Republican, on free-speech

grounds for blocking state employees' access to certain political blogs.

The ban was instituted June 21, a day after an article in *The New York Times* quoted Mark Nickolas, a Democratic blogger, as saying the governor's administration was "peddling ludicrous conspiracy theories." BluegrassReport .org, Nickolas's site, was one of the first to be blocked, but others frequently critical of Republicans were added soon thereafter.

"The timing of this caught our eye," said Jennifer Moore, a First Amendment lawyer in Louisville who is working with Public Citizen. Nickolas's site "has been around for a year," she said, "but only now has the administration decided to block it."

Moore filed an open-records request with the administration seeking documents that would explain why some political sites had been blocked and others not. Jill Midkiff, spokeswoman for the agency that oversees Internet technology decisions for state government, denied any intention to limit free speech or to single out Nickolas or other bloggers of similar political leanings.

"But using state computers to view some of these sites on state time is not an efficient use of state tax dollars or state resources," Midkiff told local reporters in Frankfort, Kentucky's capital.

Yet in addition to allowing state employees to read Web sites of newspapers and television stations, the administration has continued to allow access to at least some Republican sites.

"My site and a number of other Democratic sites are blocked while conservative blogs belonging to Rush Limbaugh and Matt Drudge, not to mention the Republican National Committee's own blog, are still accessible," said Nickolas, who was the campaign manager for Fletcher's opponent in the 2003 race for governor. "It's a problem to try to separate blogs from mainstream news Web sites in the first place, but at least if you're going to do that you would think such a ban should be applied consistently across the board."

In the last year, Fletcher, the state's first Republican governor in more than three decades, has been indicted in the patronage case along with 14 others in his administration and has lost a highly publicized effort to oust the chairman of the Kentucky Republican Party. He also recently fired his fifth press secretary.

His administration's ban on some blogs brought a flurry of postings at The Daily Kos, Boing Boing, and TPMmuckraker, three of the most heavily used blogs on the Internet. Many of those postings denounced the move as unconstitutional censorship. Reported in: *New York Times*, June 23.

foreign

Cairo, Egypt

Egyptian authorities will confiscate copies of the best-selling novel *The Da Vinci Code* and ban the film based on the book from showing in Egypt, the culture minister told parliament June 13. To applause from members of parliament, minister Farouk Hosni said: "We ban any book that insults any religion . . .We will confiscate this book."

Parliament was debating the book and film at the request of several Coptic Christian members who demanded a ban. Georgette Sobhi, a Coptic member, held up a copy of the book and the Arabic translation and said it contained material which was seriously offensive.

"It's based on Zionist myths, and it contains insults towards Christ, and it insults the Christian religion and Islam," she said.

A central part of the fictional plot is that Christ married Mary Magdalene and that their descendants are alive today.

Hussein Ibrahim, the deputy head of the Muslim Brotherhood's parliamentary bloc, said that as the Brotherhood had opposed the Danish cartoons of the Prophet Mohammad, so they would oppose any insult to Jesus Christ.

News of the government's decision caused concern in other quarters, with one human rights activist calling it a very dangerous decision and a continuation of an assault on freedom of expression.

Hafez Abu Saeda, the secretary-general of the Egyptian Organisation for Human Rights, told Reuters: "This violates freedom of thought and belief . . . This is fiction. It's art and it should be regarded as art."

He said the book had sold well in various Christian-majority countries and had not faced calls for a ban. The members of parliament should be aware that the measure would not work, given that thousands of Egyptians already own copies and that the book can be downloaded from the Internet, he added.

Shahira Fathy, the manager of Cairo's popular Diwan bookstore, said the book had been one of their top sellers since it came out in 2003. "It's a shame. A lot of people are interested in this topic," she said, adding that other books written on the subject had also been selling.

The Egyptian distributors of the film had postponed a decision on screening it in Egypt in anticipation of a ban. Reported in: iol.co.za, June 23.

Paris, France

He strokes her chin and she looks deeply into his eyes. Both smile and beam. The latest photo-story, covering French interior minister Nicolas Sarkozy's Father's Day

outing with his wife Cécilia, in the glossy magazine *Paris Match*, shows a seemingly happy couple. The accompanying text praises the display of "feeling during the rendezvous." This harmony is almost too good not to have been staged. In reality, this schmaltzy article about France's dream family was not one of the usual photo-stories about the private life of the serving conservative interior minister and promising presidential candidate. The gushing piece was more like an illustrated rebuttal.

About a year ago, the same publication landed a real scoop -- on its front page of August 25 it showed Sarkozy's wife Cécilia on a New York visit with her then boyfriend, the advertising executive Richard Attias. The sensation brought *Paris Match* record sales of 900,000 copies.

The cuckolded minister was not amused and Sarkozy went straight on the offensive. Sure, the famous couple's marital discord had long been discussed by gossip columnists, but after the *Paris Match* photos made him a target of ridicule, Sarkozy—according to satirical political magazine *Le Canard enchaîné*—demanded that his friend Arnaud Lagardère dismiss *Paris Match*'s editor-in-chief.

Lagardère, the head of a business conglomerate, who is also *Paris Match*'s owner, first of all expressed his apologies. It was clear that the exclusive story also had taken him completely by surprise. Yet, Sarkozy's friend did not want to fire his editorial director Alain Genestar on the spot. The incriminating photograph had, after all, been taken with the knowledge of the two sweethearts and was even published with their consent.

However, in the end the media company did get rid of the provoker of Sarkozy's rage: Genestar, editor-in-chief since 1999, cleared his desk—the journalist had already turned down a sideways promotion. "Revenge is a dish best served cold" commented the *Nouvel Observateur* magazine.

Similar cases have since become the order of the day in France: politicians bullying broadcasters and publishers. Brave investigative journalists get collared by the law and become "demoralized or muzzled" by long-winded and expensive legal cases, according to the writer Ghislaine Ottenheimer—from her own bitter experience.

It is now much easier for editors to fall victim to political pressures because so many newspapers are fighting for survival: *France Soir*, once a leading national tabloid paper, now has only 35,000 readers even after its latest relaunch. After losses in the tens of millions, left-wing *Libération*, with a circulation of just 76,000, had to let go its chief editor and founder Serge July, at the request of its main shareholder Edouard de Rothschild.

Even the Communist Party's main party organ *Humanité* is constantly in the red with a circulation of 50,000. And famous publications *Le Monde* and *Le Figaro* are under huge pressure from free city newssheets and news Web sites.

This financial distress is threatening journalistic pluralism, claims the journalist trade union SNJ-CGT. Under the current conservative government, reporters have increasingly been used as scapegoats. This was demonstrated, for example, in the case of Prime Minister Dominique de Villepin, when the politician, who is facing criticism from within his own party, sued four journalists for the "defamation of a government member."

De Villepin, who likes to point out that "politics requires courage," is targeting an editor at *Novel Observateur* because of his account of the unsavoury Clearstream affair, which the author cleverly named a 'Plot of the Paranoid.' Before that, the prime minister took legal steps against the reporter Denis Robert, whose investigation first broke the scandal over the alleged illegal accounts of French politicians.

Also being sued are a pair of writers who recently published a less than flattering account of the brutal use of power in the upper echelons of the state—"Showdown at the Elysée." And this power is being used above all against independent journalists like the ousted *Paris Match* editor, Genestar.

"Currently there is a tendency to limit press freedom in favor of the rights of personalities," the top journalist mused, almost prophetically, last fall: "We need more transparency, we have to illuminate the dark zones and write the truth." Reported in: *Spiegel Online*, July 4.

Tamil Nadu State, India

The Tamil Nadu government says it decided to ban the controversial movie *The Da Vinci Code* to maintain religious harmony and avert communal tension and violence in the state. The state government, which submitted its argument in the Madras High Court June 29 on the reasons that forced it to ban the movie, said the film had created considerable resentment among Christians in India.

Tamil Nadu was one of the first states in India to ban *The Da Vinci Code* early in June.

An affidavit filed by the state government in the High Court said the film created resentment among Christians as well as certain sections of Muslims. "There is likely to be a breach of peace," it pointed out.

The argument was filed in response to a petition filed by Sony Pictures Releasing of India challenging the suspension order. Janata Party president Subramanian Swamy and two Christian groups have also filed petitions.

In a separate argument, Greater Chennai Commissioner of Police Letika Saran submitted that the film had "created an upsurge among the Christians, and the film was condemned by a large section of the minority." The Commissioner said the suspension was passed after the government directed her to assess the situation and pass appropriate orders.

She said the public impact created by a book and by a film were vastly different from each other, and "the alleged worldwide success of the book is not a relevant consideration under the Cinematograph Act."

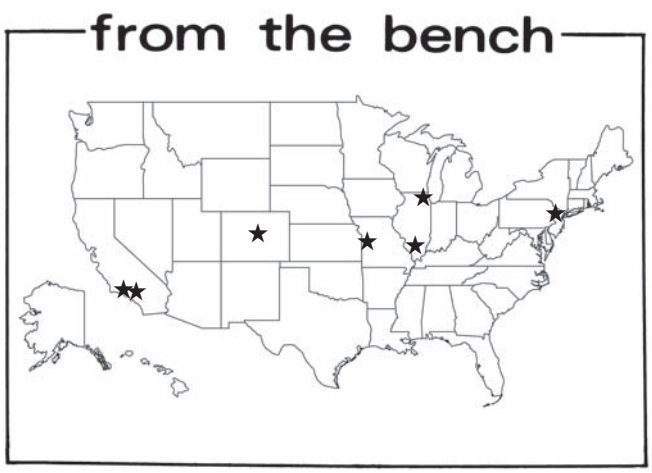
Seeking to distinguish the Christian audience in India and in Western countries, the Commissioner said: "Merely because the film has allegedly found acceptance in Western countries and some other parts of India, it would not lend any credibility to the petitioner's case." Reported in: *Indian Catholic*, June 30.

Ankara, Turkey

The Chief Public Prosecution Office has decided to prosecute two publishers for publishing a book by renowned American intellectual Noam Chomsky accusing them of degrading the Turkish identity and the Turkish Republic. The office prepared an indictment against the two publishing house that released the book written by Noam Chomsky and Edward Herman titled *Manufacturing Consent: The Political Economy of the Mass Media.*

The indictment claimed that certain extracts from the book degrade the Turkish identity and the Turkish Republic, and fuel hatred and discrimination among the people.

Publishers Omer Faruk Kurhan and Lutfi Taylan Tosun could face up to six years in prison if found guilty. Reported in: Zaman Online, July 5. □



U.S. Supreme Court

The Supreme Court on June 28 repudiated the Bush administration's plan to put Guantanamo detainees on trial before military commissions, ruling broadly that the commissions were unauthorized by federal statute and violated international law.

"The executive is bound to comply with the Rule of Law that prevails in this jurisdiction," Justice John Paul Stevens, writing for the 5-to-3 majority, said at the end of a seventy-three-page opinion that in sober tones shredded each of the administration's arguments, including the assertion that Congress had stripped the court of jurisdiction to decide the case. A principal, but by no means the only, flaw the court found in the commissions was that the president had established them without Congressional authorization.

The decision was such a sweeping and categorical defeat for the Bush administration that it left human rights lawyers who have pressed this and other cases on behalf of Guantanamo detainees almost speechless with surprise and delight, using words like "fantastic," "amazing," "remarkable." Michael Ratner, president of the Center for Constitutional Rights, a public interest law firm in New York that represents hundreds of detainees, said, "It doesn't get any better."

President Bush said he planned to work with Congress to "find a way forward," and there were signs of bipartisan interest on Capitol Hill in crafting legislation that would authorize new, revamped commissions intended to withstand judicial scrutiny.

The courtroom was, surprisingly, not full, but among those in attendance, there was no doubt that they were witnessing a historic event, a definitional moment in the ever-shifting balance of power among the branches of government that ranked with the court's order to President Nixon in 1974 to turn over the Watergate tapes or with the court's rejection of President Truman's seizure of the nation's steel mills, a 1952 landmark decision from which Justice Kennedy quoted at length.

The majority opinion by Justice Stevens and a concurring opinion by Justice Anthony M. Kennedy, who also signed most of Justice Stevens's opinion, indicated that finding a legislative solution would not necessarily be easy. In an important part of the ruling, the court held that a provision of the Geneva Conventions known as Common Article 3 applies to the Guantanamo detainees and is enforceable in federal court for their protection.

This provision requires humane treatment of captured combatants and prohibits trials except by "a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized people."

The opinion made it clear that while this provision does not necessarily require the full range of protections of a civilian court or a military court martial, it does require observance of protections for defendants that are missing from the rules the administration has issued for military commissions. The flaws the court cited were the failure to guarantee the defendant the right to attend the trial and the prosecution's ability under the rules to introduce hearsay evidence, unsworn testimony, and evidence obtained through coercion.

Justice Stevens said that the historical origin of military commissions was in their use as a "tribunal of necessity" under wartime conditions. "Exigency lent the commission its legitimacy," he said, "but did not further justify the wholesale jettisoning of procedural protections."

The majority opinion was also joined by Justices David H. Souter, Ruth Bader Ginsburg, and Stephen G. Breyer, who wrote a brief concurring opinion of his own that focused on the role of Congress. "The court's conclusion ultimately rests upon a single ground: Congress has not issued the executive a blank check," he said.

The dissenters were Justices Clarence Thomas, Antonin Scalia, and Samuel A. Alito, Jr. Each wrote a dissenting opinion. Justice Scalia focused on the jurisdictional issue, arguing that Congress had stripped the court of jurisdiction to proceed with this case, *Hamdan* v. *Rumsfeld*, when it passed the Detainee Treatment Act last December and provided that "no court, justice, or judge" had jurisdiction to hear habeas corpus petitions filed by detainees at

Guantanamo Bay. The question was whether that withdrawal of jurisdiction applied to pending cases. The majority held that it did not.

Justice Thomas's dissenting opinion addressed the substance of the court's legal conclusions. In a portion of his opinion that Justices Scalia and Alito also signed, he called the decision "untenable" and "dangerous." He observed that "those justices who today disregard the commander-in-chief's wartime decisions" had last week been willing to defer to the judgment of the Army Corps of Engineers in a Clean Water Act case. "It goes without saying that there is much more at stake here than storm drains," he said.

Chief Justice John G. Roberts, Jr., did not take part in the case. Last July, four days before President Bush nominated him to the Supreme Court, he was one of the members of a three-judge panel of the federal appeals court here that ruled for the administration in this case.

In the courtroom, the chief justice sat silently in his center chair as Justice Stevens, sitting to his immediate right as the senior associate justice, read from the majority opinion. It made for a striking tableau on the final day of the first term of the Roberts court: the young chief justice, observing his work of just a year earlier taken apart point by point by the tenacious eighty-six-year-old Justice Stevens, winner of a Bronze Star for his service as a Navy officer during World War II.

The decision came in an appeal brought on behalf of Salim Ahmed Hamdan, a Yemeni who was captured in Afghanistan in November 2001 and brought to Guantanamo in June 2002. According to the government, he was a driver and bodyguard for Osama Bin Laden. In July 2003, he and five others were to be the first to face trial by military commission. But it was not until the next year that he was formally charged with a crime, conspiracy.

The commission proceeding began but was interrupted when the federal district court in Washington ruled in November 2004 that the commission was invalid. This was the ruling that the federal appeals court, with the participation of then-Judge Roberts, overturned last July.

Lt. Cmdr. Charles Swift, Hamdan's Navy lawyer, told the Associated Press that he had informed his client about the ruling by telephone. "I think he was awe-struck that the court would rule for him, and give a little man like him an equal chance," Commander Swift said. "Where he's from, that is not true."

The decision contained unwelcome implications, from the administration's point of view, for other legal battles, some with equal or greater importance than the fate of the military commissions themselves.

For example, in finding that the federal courts still have jurisdiction to hear cases filed before this year by detainees at Guantanamo Bay, the justices put back on track for decision a dozen cases in the lower courts that challenge basic rules and procedures governing life for the hundreds of people confined at the United States naval base there.

In ruling that the congressional "authorization for the use of military force," passed in the days immediately following the September 11, 2001, terrorist attacks, cannot be interpreted to legitimize the military commissions, the ruling poses a direct challenge to the administration's legal justification for its secret wiretapping program.

Representative Adam Schiff, a California Democrat who has also introduced a bill with procedures for trying the Guantanamo detainees, said the court's refusal to give an open-ended ruling to the force resolution meant that the resolution could not be viewed as authorizing the National Security Agency's domestic wiretapping.

Perhaps most significantly, in ruling that Common Article 3 of the Geneva Conventions applies to the Guantanamo detainees, the court rejected the administration's view that the article does not cover followers of Al-Qaeda. The decision potentially opened the door to challenges, by those held by the United States anywhere in the world, to treatment that could be regarded under the provision as inhumane.

Justice Stevens said that because the charge against Hamdan, conspiracy, was not a violation of the law of war, it could not be the basis for a trial before a military commission. Justice Kennedy did not join this section of the opinion, leaving it with only four votes, because he said it was unnecessary given the general finding that the commissions were invalid. Reported in: *New York Times*, June 29.

The Supreme Court ruled June 28 that Pennsylvania officials did not violate the free-speech rights of troublesome inmates by keeping secular newspapers and magazines away from them. By a 6–2 vote, the justices said the state could use newspapers as incentives to get inmates in a high-security unit to behave themselves. But Justice Stephen Breyer wrote in *Beard* v. *Banks* that Pennsylvania's win could be short-lived, depending on whether there is another constitutional challenge to the high-security unit's rules.

The decision reversed a ruling by the U.S. Court of Appeals for the Third Circuit but validated a dissent by the high court's newest member, Justice Samuel Alito, who sided with Pennsylvania when he served on the appellate court. Alito did not participate in the argument before the Supreme Court.

Breyer said that "prison officials, relying on their professional judgment, reached an experience-based conclusion that the policies help to further legitimate prison objectives."

The high court's ruling could have affected prison operations nationwide if justices had required state officials to prove that their policies serve legitimate security and rehabilitative interests. The Bush administration sided with Pennsylvania, saying the state's policy deserves deference from the courts because it involves maintaining order in prisons.

In a dissent, Justice John Paul Stevens said a trial should be held to determine whether Pennsylvania's goal is legiti-

mate, especially because of the rights at stake. "Plainly, the rule at issue in this case strikes at the core of the First Amendment rights to receive, to read and to think," Stevens wrote.

The case involved a high-security segregation unit that Pennsylvania created for inmates who failed to follow prison rules. Inmates in that unit were permitted access to religious newspapers, two paperback books of general interest, their legal documents, and letters from family. If the forty or so inmates housed there behaved, state officials said the prisoners could regain the privilege of receiving secular newspapers and magazines.

Religious and civil liberties groups had argued that fundamental rights, such as freedom of speech, are not mere privileges that can be granted or revoked at the whim of a prison official. They worried that prison officials would not stop with newspapers but may one day bar access to the Bible.

The case began in October 2001 when Ronald Banks filed a civil rights lawsuit on behalf of himself and other inmates in the disciplinary unit, then located in Pittsburgh, after prison officials barred him from receiving *The Christian Science Monitor*, a nonreligious daily newspaper. By a split vote, a three-judge Third Circuit panel sided with Banks, ruling that prison officials had failed to show the policy had any effect on inmate behavior. This finding was reversed by the Supreme Court ruling. Reported in: Associated Press, June 28.

The Supreme Court intervened July 3 to save a large cross on city property in southern California. A lower court judge had ordered the city of San Diego to remove the cross or be fined $5,000 a day.

Justice Anthony M. Kennedy, acting for the high court, issued a stay while supporters of the cross continue their legal fight. Lawyers for San Diegans for the Mt. Soledad National War Memorial said in an appeal that they wanted to avoid the "destruction of this national treasure." And attorneys for the city said the cross was part of a broader memorial that was important to the community.

The twenty-nine-foot cross, on San Diego property, sits atop Mount Soledad. A judge declared it was an unconstitutional endorsement of religion. The cross, which has been in place for decades, was contested by Philip Paulson, a Vietnam veteran and atheist.

Three years ago, the Supreme Court refused to consider to consider the long-running dispute between Paulson and the city. But Kennedy, acting on a petition filed by the city, also suggested that the high court might hear the case when the appeals are completed. He added that the court might be influenced by the fact that Congress has passed legislation permitting the cross to be designated a national war memorial.

"I'm excited for San Diego," said Mayor Jerry Sanders, who has pledged to save the cross. The city had been facing an August 2 deadline to remove the forty-three-foot high cross or pay $5,000 a day in fines.

After seventeen years of litigation, a federal judge in May found the cross violated the constitutional separation of church and state, and ordered it removed. San Diego voters have twice voted to keep the cross, but the courts have struck down a sale of the public property beneath it as rigged in favor of groups promising to retain the cross. An appeal on that issue is pending.

City Attorney Michael Aguirre said he found it revealing that Kennedy, in his four-page order, continually referred to the cross as a war memorial. The city has long contended that the cross is not merely a religious symbol but rather a memorial to military personnel killed in war. Reported in: *San Diego Union-Tribune*, July 3; *Los Angeles Times*, July 8.

The U.S. Supreme Court ruled June 22 that it had made a mistake in agreeing to hear an appeal of a case that some academics have said represents a broad threat to academic freedom.

The ruling, which was unsigned, did not explain why the court thought it had erred, but speculation will naturally turn to the change in personnel on the court in the time since it agreed to consider the appeal.

The case, *Laboratory Corporation of America Holdings* v. *Metabolite Laboratories Inc., et al.*, concerns one company's patent-infringement claim against the other. No academics or universities are involved in the dispute, but it raises an intellectual-property question that many scholars had hoped the court would resolve. At issue in the case was whether an element of the patent was really eligible to be patented.

The patent, which covers a technique for testing for homocysteine, an amino acid, includes the observation that high levels of homocysteine indicate a vitamin deficiency. Critics of the patent said that such a correlation was simply a biological fact, a law of nature that was inherently unpatentable. The U.S. Court of Appeals for the Federal Circuit, however, upheld that part of the patent as valid.

In an essay published last winter, Lori B. Andrews, a law professor at the Illinois Institute of Technology, wrote that such a ruling threatened "the freedom to think and publish" because other basic "scientific facts and methods of scientific and medical inquiry" would soon be patented as well, severely circumscribing what scientists could do without seeking permission from and paying royalties to a host of new patent holders. The American Medical Association and other academic groups joined her in filing briefs with the Supreme Court that criticized the patent.

In a response to that essay, Jeffrey S. Boone, an intellectual-property expert, concluded that "the sky is not falling, the Patent Office is not the new thought police, and academic freedom is not being limited."

Andrews and her allies appear to have swayed only three members of the Supreme Court. Justice Stephen G.

Breyer, joined by Justices John Paul Stevens and David H. Souter, wrote a fifteen-page dissent that said the court should have ruled on the case for a range of reasons, including those cited by Andrews. Reported in: *Chronicle of Higher Education* online, June 23.

libraries

St. Joseph, Missouri

A federal magistrate has ordered the Rolling Hills Consolidated Library in St. Joseph to reinstate the manager of its Savannah branch, who was fired in May 2003 for refusing to work on Sundays because it conflicted with her religious beliefs.

Judge John Maughmer ruled July 7 that Connie Rehm, who filed federal and state discrimination complaints after the incident, must be rehired even though RHCL Director Barb Read had testified that reinstating Rehm would be a burden on the cash-strapped library and create hostility among staff.

In May, a federal jury found that the library had violated Rehm's civil rights and awarded her $53,712 in back pay. Attorney David Gibbs of the Christian Law Association in Seminole, Florida, has filed a motion for Rolling Hills to pay Rehm's legal fees of more than $275,000. Maughmer must still rule on that request and on any appeal the library's attorneys may make.

Attorneys for both sides said they would meet in coming weeks to work out the timetable for Rehm's return to the Savannah branch. Reported in: *American Libraries Online*, July 14.

schools

Riverside, California

A Riverside County judge refused June 14 to issue a temporary restraining order against the Jurupa Unified School District, which had prevented a student from holding a rally at school protesting illegal immigration and from wearing a T-shirt denouncing undocumented residents.

Superior Court Judge Thomas Cahraman said there was not enough time to study the case before the end of school next week. "I am not belittling the arguments being made, I'm very interested in them, but I don't know how I can analyze this by June 21," he said.

Jurupa Valley High School senior Joshua Denhalter, eighteen, sued the district for $25,000 because it refused to let him wear his shirt or hold a demonstration on the campus in Mira Loma. In March, he was suspended for three days after passing out fliers at school for an off-campus protest he organized.

Denhalter said he was silenced while students supporting illegal immigrants were allowed to rally at school. The district said it held an open forum where all views were welcome.

In May, Denhalter went to school wearing a shirt with a picture of Uncle Sam and the words "Illegal Aliens We Don't Want You!" on it. He was told to turn it inside out and not wear it again because it might offend some students. He had hoped to force the school to let him hold a protest and wear his shirt on campus before classes ended.

Attorney Timothy Liebaert, representing Denhalter in court, said the ruling would not affect the rest of the lawsuit, which accuses the school district of violating Denhalter's First Amendment right to free speech. "The case is going forward," Liebaert said. Reported in: *Los Angeles Times*, June 15.

colleges and universities

Los Angeles, California

A Los Angeles federal judge has issued a tentative ruling to allow a Christian school in Riverside County and six of its students to proceed with a discrimination lawsuit against the University of California over its admissions policies.

In a case that has drawn national attention, the plaintiffs, including Calvary Chapel Christian School of Murrieta and a group representing 4,000 Christian schools nationwide, filed a suit last summer accusing UC of discriminating against them by setting admissions rules that violate their rights to freedom of speech and religion.

The case is being closely watched by Christian educators, free speech advocates and higher education officials who say it could affect admissions policies throughout the country. Specifically, the schools contend that UC is biased in its admissions standards against courses taught from a Christian viewpoint, while generally approving those from other religious and political perspectives.

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

U.S. District Court Judge S. James Otero, in comments from the bench after a short hearing June 27, said he had tentatively decided to allow Calvary Christian and the other plaintiffs to pursue their claim against the public university system, according to lawyers for both sides.

The judge did not say when he would issue his final ruling, but the attorneys said they expected it within a few weeks.

Attorney Robert H. Tyler, who represents the Murrieta school, said that his clients were pleased by the ruling. "The court has clearly indicated that substantial parts of our case,

concerning viewpoint discrimination, free speech and equal protection, will go forward," Tyler aid.

"It's a first hurdle for a plaintiff in any lawsuit," said Wendell R. Bird, an Atlanta attorney who represents the Assn. of Christian Schools International.

UC counsel Christopher M. Patti said the judge appeared to be leaning toward granting a UC motion to dismiss one claim in the case but appeared likely to allow most of the lawsuit to proceed. Patti said Otero also made note of the fact that other types of religious schools, including Jewish and Muslim schools, had not joined Calvary's suit.

The lawsuit charges that UC violated the students' and the school's rights by rejecting certain courses as not meeting the university's admissions standards. Last school year, for instance, UC said it would not give Calvary students admissions credit for an English class, Christianity and Morality in American Literature; a history course, Christianity's Influence in America; and a government class titled Special Providence: Christianity and the American Republic. Reported in: *Los Angeles Times*, June 29.

Carbondale, Illinois

Southern Illinois University at Carbondale must continue to recognize a campus Christian group that excludes homosexual students as members while the group's lawsuit against the university is pending, the United States Court of Appeals for the Seventh Circuit ruled July 10. A divided three-judge panel of the court issued an injunction that prevents the university from withdrawing its official recognition of the Christian Legal Society.

Judge Diane S. Sykes wrote for the majority that the society had shown there was a likelihood that the university had "impermissibly infringed" on the group's "right of expressive association." She also wrote that the university's actions were in violation of a U.S. Supreme Court ruling that says antidiscrimination laws cannot be applied to suppress or promote a particular belief.

The society insists that members abide by its Christian beliefs on sexuality, which forbid premarital sex and homosexuality. While students with different views may attend meetings, they may not become members or officers.

In a dissenting opinion, Judge Diane P. Wood argued against the injunction, saying nothing the university was doing impinged directly on the operation of the group.

The case now goes back to the U.S. District Court in Benton, Illinois, where the society had sued the university after official recognition was withdrawn.

David Gross, a spokesman for the university, said the decision was "not unexpected" and that Southern Illinois was "anxious for the fact-finding process to begin."

In a similar case, the U.S. District Court in San Francisco ruled in April that the University of California's Hastings College of Law could deny student-activities funds to the Christian Legal Society because it does not allow homosexual members. Reported in: *Chronicle of Higher Education* online, July 11.

New York, New York

A federal judge has ordered the Bush administration to decide by September whether to approve an entry visa for Tariq Ramadan, a prominent but controversial European Muslim scholar. In 2004 the government had revoked a work visa for Ramadan, a decision said to be based on unspecified public-safety or national-security interests, preventing the Swiss citizen from taking a tenured teaching position at the University of Notre Dame.

The American Civil Liberties Union filed the lawsuit in January in federal court in Manhattan, challenging a provision of the USA PATRIOT Act that a Department of Homeland Security official had initially used to justify the visa revocation. The provision allows the government to deny a visa application to anyone who it believes "endorses or espouses terrorist activity" or "persuades others" to do so.

The ACLU, which is suing on behalf of the American Academy of Religion, the American Association of University Professors, and the PEN American Center, accuses the government of using the provision to deny entry to foreigners whose political views it does not like. Ramadan, a scholar of Islamic studies and philosophy, is known as a forceful advocate on behalf of Muslims in Europe and elsewhere.

He is also a plaintiff in the lawsuit, which names Michael Chertoff and Condoleezza Rice, in their official capacities as Secretary of Homeland Security and Secretary of State, as defendants.

Since the revocation of his work visa to enter the United States in July 2004, Ramadan has worked as a visiting scholar at the University of Oxford, in England, and at a research foundation in London. Last September, he reapplied for a visa to visit the United States in order to attend conferences and give lectures.

In an opinion and order released June 23, Judge Paul A. Crotty, of the U.S. District Court in Manhattan, wrote that if the government has a legitimate reason for excluding Ramadan, it may do so, but only by acting on the current visa application, "not by studying Ramadan's application indefinitely."

Judge Crotty noted that the government has had all of 2004 and since September 2005 to consider Ramadan's application. The judge called that "more than adequate time" and rejected the government's argument that it might make "possible future discovery of statements" made by Ramadan that would disqualify his entry under the PATRIOT Act.

Jameel Jaffer, deputy director of the ACLU's national-security program, said that the ruling "reaffirms that the

government cannot use the immigration laws to silence and stigmatize its political critics."

Ramadan is the grandson of Hassan al-Banna, the Egyptian founder of the Muslim Brotherhood, an Islamic revivalist group outlawed in several Middle Eastern countries. Ramadan is not a member of the group, which has been known for violence, but some critics have denounced him as an extremist.

In his ruling, Judge Crotty noted that the British government had recently asked Ramadan to join a group in Britain that seeks to combat extremism.

Ramadan is one of a number of foreign scholars who have been refused permission to enter the United States, and as a result have had to cancel plans to visit or to accept job offers here. The latest such incident occurred in June, when a professor from Greece on his way to an academic conference in New York State was detained and questioned for several hours at John F. Kennedy International Airport, then put on a flight back to Athens.

In a separate lawsuit, the ACLU and other organizations are seeking to force the government to provide information about its reasons for excluding the scholars. Reported in: *Chronicle of Higher Education* online, June 26.

privacy

Chicago, Illinois

A federal judge in Chicago dismissed a class-action lawsuit July 25 against AT&T that claimed it had illegally given information about its customers to the National Security Agency. The judge, Matthew F. Kennelly, based his ruling on the state secrets privilege, which can bar suits that would disclose information harmful to national security.

The ruling was at first blush at odds with a decision the previous week by a federal judge in San Francisco. That judge, Vaughn R. Walker, allowed a similar suit against AT&T to proceed notwithstanding the state secrets privilege.

But the two decisions can be reconciled, Judge Kennelly wrote. The Chicago case concerns records of phone calls, including when they were placed, how long they lasted and the phone numbers involved. The San Francisco case, by contrast, mainly concerns an NSA program aimed not at a vast sweep of customers' records but at the contents of a more limited number of communications.

Because the Bush administration has confirmed the existence of such targeted wiretapping, the San Francisco suit could proceed without running afoul of the state secrets privilege, Judge Walker ruled last week. ''The government has opened the door for judicial inquiry," he wrote, "by publicly confirming and denying material information about its monitoring of communications content."

In his decision, Judge Kennelly said there had been no comparable confirmation by the government or AT&T of "the existence or nonexistence of AT&T's claimed record turnover." He refused to rely on news accounts of the program as proof of its existence and noted that "no executive branch official has officially confirmed or denied the existence of any program to obtain large quantities of customer telephone records."

The case was brought by the journalist Studs Terkel, five other individual plaintiffs, and the American Civil Liberties Union of Illinois. They argued that the program violated a federal law that forbids the disclosure of some customer records to the government, and they sought a court order to stop it.

Among the papers the government submitted to Judge Kennelly to urge the dismissal of the case on state secrets grounds was a declaration from John D. Negroponte, the director of national intelligence. "Even confirming that a certain intelligence activity or relationship does not exist, either in general or with respect to specific targets or channels," Negroponte said, "would cause harm to the national security because alerting our adversaries to channels or individuals that are not under surveillance could likewise help them avoid detection."

Judge Kennelly noted his "great antipathy" for dismissing the suit. "Nothing in this opinion," he wrote, "prevents the plaintiffs from using the legislative process, not to mention their right of free speech, to seek further inquiry by the executive and legislative branches into the allegations in their complaint."

More than thirty lawsuits over government surveillance programs are pending in the nation. Only one, in Detroit, has moved beyond questions of procedure and privilege to consider the legality of the wiretapping program. A decision in that case is expected soon. Reported in: *New York Times*, July 26.

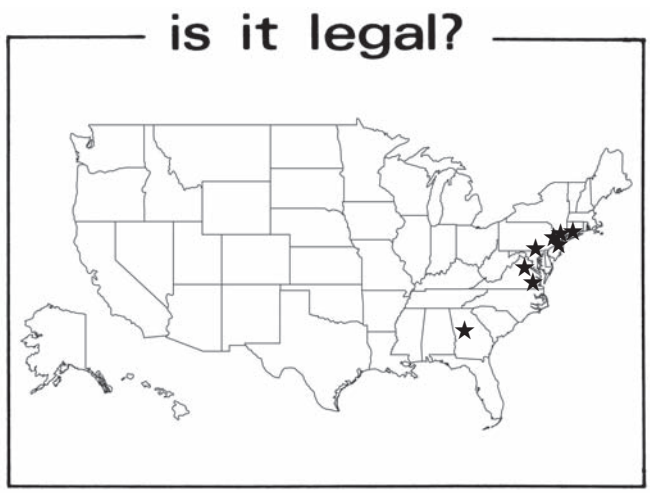
film and video

Denver, Colorado

A federal judge in Denver has ordered four companies to stop selling cleaned-up versions of Hollywood films, finding that the practice violates federal copyright law.

The decision by Judge Richard P. Matsch, issued July 6, culminates a four-year legal battle that began when Utah-based CleanFlicks launched a preemptive suit against the Directors Guild of America (DGA) and sixteen leading directors—including guild President Michael Apted, Steven Spielberg, and Martin Scorsese—hoping to obtain a favorable court ruling that would legally christen the practice of altering films.

(continued on page 258)



libraries

Worcester, Massachusetts

The Worcester Public Library is being sued in U.S. District Court because of its policy of limiting homeless people and people living in shelters to borrowing no more than two items from the library at a time.

The class action suit—filed July 6 on behalf of three homeless people, the Central Massachusetts Housing Alliance, and the Massachusetts Coalition for the Homeless––alleges violation of due process, equal protection, and free speech rights under the state and federal constitutions. It also says the library violates the American Library Association's code of ethics and the association's bill of rights.

The suit seeks an injunction preventing the library policy from being enforced and declaring it illegal. It also seeks to have the city pay for plaintiffs' costs and fees. It was filed by the Legal Assistance Corporation of Central Massachusetts and the American Civil Liberties Union of Massachusetts.

One plaintiff is a victim of spousal abuse identified as Jane Doe and living in a shelter with her child. She said that she had to enroll her child in public school because she was unable to continue home schooling her child when she was unable to obtain the necessary educational materials from the library.

Two other plaintiffs, Suzette Lindgren and Andrew Moyer, are married and live with their eight-year-old daughter at The Village at Cambridge Street, a shelter operated by CMHA at 510 Cambridge St. Avid readers, they have to visit the library numerous times per week to satisfy their reading appetites, according to the suit, which alleges that Lindgren was embarrassed when a library staffer called attention to her homelessness in the presence of other library patrons.

The suit comes at a time when the city is under fire from social services advocates for a proposal to suggest voluntary limits on how residential social services are sited in the city, a proposal to amend state law to allow restrictions on the siting of services for sex offenders, and a campaign against panhandling. Neighborhood advocates are opposing the placement of social services in their areas or even placing any more social services anywhere in the city.

But City Solicitor David M. Moore said, "Legally, this is a reasonable policy to address non-returned books." He said library research shows "people without addresses or addresses at shelters accounted for a substantial percentage of books not returned," although the library had no figures available to quantify that.

Worcester library officials said other libraries have similar policies, and Moore said there are "no courts that have found this practice legally objectionable or unconstitutional." He said that he knows of no cases that have gone to court.

Jonathan Mannina, Legal Assistance Corp. executive director, said that other libraries, including Porter County, Indiana, have dropped similar policies in the face of opposition without going to court over it. He said the Worcester library has not shared figures on nonreturns it attributes to people living in shelters, but he said he is not aware of city policies that discriminate against others who might have a higher rate of no-returns, such as college students, people who live in apartments, or people who live out of town and are allowed to take up to forty items at a time from the library.

He said some people living in shelters are there for as long as two years, while some borrowers with no restriction have lived in the city for less time.

Ronal C. Madnick, Worcester County Chapter director of the ACLU, said there have been numerous meetings with library officials and trustees in a fruitless attempt to settle the matter. "The bottom line is, we think people should be judged by what they do and not by the group that they belong to," he said.

Mannina said the policy "reflects poorly on the city's commitment to families and children, including those who grapple daily with challenges of homelessness. We are hopeful of working with the city to resolve the case, which will be in the best interests of the city of Worcester and allow the city to avoid significant costs they will necessarily incur to defend the lawsuit if it continues."

Moore, who was provided with an advance copy of the suit, said, "We will defend the policy of the library board." He has not consulted with the library directors yet, but said,

"Obviously, once a suit is filed, we defend it, and compromising or resolving it in some form or fashion is always a possibility."

Grace K. Carmark, CMHA executive director, said, "The public library is a community treasure that can positively impact so many, especially children. It is wrong to treat some children by virtue of their address differently than others." Reported in: *Worcester Telegram*, July 7.

Hasbrouck Heights, New Jersey

Library Director Michele Reutty is under fire for refusing to give police library circulation records without a subpoena.

Reutty says she was only doing her job and maintaining the privacy of library patrons. But the mayor called it "a blatant disregard for the police department," which needed her help to identify a man who allegedly threatened a child.

Reutty, the director for seventeen years, faces possible discipline by the library board. Members of the Borough Council have suggested she receive punishment ranging from a letter of reprimand in her personnel file to a thirty-day unpaid suspension. But the library board of trustees said it would reserve judgment until a closed-door hearing.

Police received a report May 10 that a twelve-year-old borough girl was allegedly sexually threatened by a man outside the municipal building. The library is on the second floor. The girl told her parents, who called police.

The suspect, who has been identified as a twenty-three-year old Hackensack man, did not molest the girl, said borough Police Chief Michael Colaneri. The investigation is ongoing through the Bergen County Prosecutor's Office, Colaneri said.

The girl told police the man was carrying a library book with a certain title. The next day, borough police detectives asked Reutty to tell them who took out that book.

Reutty said she refused to give the information to police without a subpoena—in accordance with New Jersey state statutes governing access to private information from libraries, she said. Police came back with a subpoena later that day. Reutty conducted the search and told police she could not find a book with that title.

So, police asked her to show them all the records of everyone who took out or renewed a book for the previous ten days. Reutty asked for another subpoena because those records are computerized and not kept at the library.

On May 12, Reutty said, she complied with the second subpoena—which required a special computer program by the Bergen County Cooperative Library System. Police found the information right away, which helped them to identify the suspect, according to Colaneri.

But borough officials say Reutty intentionally stonewalled the police investigation by putting the library first. They also charged that she did not follow procedure by contacting the borough's attorney when she received the subpoena. Instead, she called a lawyer from the state library association.

The whole episode is "shocking," Reutty said. "I followed the law. And because I followed the law, at the end of the day, the policemen's case is going to hold strong. Nobody is going to sue the library, and nobody is going to sue the municipality of Hasbrouck Heights because information was given out illegally."

On June 20, about twenty librarians from around the state attended a joint meeting of the Borough Council and the library board of trustees in a show of support for Reutty. The group included the executive director of the New Jersey Library Association, who told borough officials that the organization would revise its rules governing subpoenas.

"I will ask the Attorney General's Office and the [state] Police Association to sit down with us and look at those regulations," said NJLA head Patricia Tumulty. Reutty is the first vice president/president-elect of the NJLA.

Several residents spoke in Reutty's defense, saying she must have been confused about the borough's rules. But Reutty dismissed that interpretation. "The main issue here is privacy of information, and all of this could have been handled by education," she said.

Reutty did the right thing, said Arthur Miller, her lawyer. "At no time did Michele Reutty say to any police officer or anybody else that she would not give the information if it was properly requested," Miller told the council. "She said you've got to get proper court authorization."

Borough labor lawyer Ellen Horn, who also represented the library trustees, said Reutty was "more interested in protecting" her library than helping the police. "It was an absolute misjudgment of the seriousness of the matter," Horn said.

Reutty said the issue has grown to encompass a larger issue. "I think it would have been so easy for me to just resign when all of this started happening," she said. "But it's not just me anymore. This is so that other librarians, when faced with a subpoena, will do the right thing." Reported in: northjersey.com, June 22.

schools

Atlanta, Georgia

Decatur High School student Kurt Hughes wouldn't call himself religious. He's never even read the Bible. But he wouldn't mind taking a class on the holy text if it were offered at his high school in Decatur, Georgia. After all, "You look at *The Old Man and the Sea*, *King Arthur*, and even *The Matrix*, all have biblical allusions," the junior said. "It'd be useful to know exactly what's in it."

The Georgia legislature seems poised to endorse just such a course. Though students in many states enroll in classes related to the Bible, Georgia would become the

first to require its Department of Education to put in place a curriculum to teach the history and literature of the Bible. Schools would use the book itself as the classroom textbook. Specifically the bill would establish electives on both the New and Old Testaments.

It has overwhelmingly passed both chambers, but needs a final vote on a minor House change. If it passes, the state's Department of Education has a year to establish Bible elective courses in the curriculum.

In the late 1700s, Congress thought enough of the Bible as a textbook that it printed 40,000 copies. But the bold effort here in Georgia to use the Bible in today's secular curricula may be about presenting it as a moral code rather than a foundation to better understand the biblical allusions in literature, critics say.

"Behind this is the tension around the country about how to go about doing a Bible elective, and a lot is at stake," says Charles Haynes, director of the First Amendment Center in Arlington, Virginia.

The Bible is already being used as a course of study in as many as one thousand American high schools, according to the National Council on Bible Curriculum in Public Schools in Greensboro, N.C. The U.S. Supreme Court allows it as long as it's presented objectively, and not taught as fact. But the Georgia legislature's unprecedented decision to wade into what is usually a school district initiative has created concerns.

For example, the bill's use of terms such as Old and New Testament reflect a Protestant bias, some critics say. After all, Catholics and Jews have different interpretations and names for the tome. "To pick one is to suggest that is the right Bible, which is a school district making a faith statement," says Judith Schaeffer, a lawyer for People for the American Way, which works to maintain the separation of church and state.

Others worry that this trend—Alabama and Missouri are also considering statewide Bible study classes—is part of the broader culture war over the role of religion in civic life, and seeks to satisfy social conservatives rather than enlighten students.

"This is a political issue as much as it is a religious issue," says Frances Paterson, a professor at Valdosta State University who specializes in religion and public education. "I would guess that [its sponsors] hope that nobody is going to police this, and when people step over the line, it's going to be ignored, either because nobody's aware of it or they'd be intimidated into not objecting."

Its sponsors insist the bill aims to help students gain broader understanding about the underpinnings of Western culture, from Michelangelo to Hemingway.

"The biggest misconception is that this teaches the Bible when, in fact, it uses the Bible as the primary text to teach a course in history and literature influenced by the Bible," says a spokesman for Sen. Tommie Williams (R), the bill's sponsor.

Many parents, however, may object to using the Bible as a textbook since doing so may expose their children to the book's various interpretations and criticism, some say. "A great many people in Georgia are conservative Protestants who take the Bible literally, and that's going to be a problem if you have an academic study of the Bible. . . ." says Paterson. Reported in: *Christian Science Monitor*, March 27.

Frenchtown, New Jersey

A school superintendent's decision to bar a second-grade girl from singing "Awesome God" in an after-school talent show is developing into an important showdown over the role of religious speech in public elementary schools.

The issue arose in May 2005 when an eight-year-old student in Frenchtown, was told that the song she'd selected to perform in the show was too religious. To some religious groups, the incident illustrates unconstitutional government hostility toward people of faith.

School officials defend the action, saying they don't oppose religious songs but that the lyrics of "Awesome God" cross the line into proselytizing and thus are not appropriate for a show performed by and for young students.

A year later, lawyers for both sides are asking a federal judge in Trenton, to decide whether school officials exercised reasonable judgment as educators in banning the song, or instead violated the second-grader's free speech and religious rights. U.S. District Judge Stanley Chesler was expected to take up the case July 3.

"This is tolerance and political correctness gone awry," says Maryann Turton, the girl's mother. "This is a much bigger picture than just our daughter in our little town. It is going on everywhere."

The case has attracted the attention of the Alliance Defense Fund, an Arizona-based religious rights group that is representing the girl and her parents in a lawsuit against the school district. In addition, the civil rights division of the Justice Department and the New Jersey chapter of the American Civil Liberties Union (ACLU) are filing friend-of-the-court briefs supporting the girl's right to sing "Awesome God" at the talent show.

School officials say the issue is being blown out of proportion. They say they offered to allow the girl to sing a different religious song, but the offer was turned down. Frenchtown School Superintendent Joyce Brennan says the "Awesome God" lyrics were too graphic and violent, and crossed the line into proselytism.

"The problem came with the words in the song that were not espousing what the child believed but rather indicating what other people should be believing," Brennan said.

The lyrics read in part:

> There's thunder in His footsteps
> And lightning in His fists

(Our God is an awesome God)
And the Lord wasn't joking
When He kicked 'em out of Eden
It wasn't for no reason
That He shed His blood
His return is very close
And so you better be believing that
Our God is an awesome God.

The U.S. Supreme Court has not directly addressed the issue of religious speech at the elementary-school level. The justices have allowed students to use public school classrooms for religious meetings after school, but they have also struck down the offering of a student-led prayer prior to high school football games in Texas.

The Frenchtown case falls somewhere between those two decisions, analysts say. Judge Chesler must decide whether letting the girl sing "Awesome God" would be a school endorsement of a particular religious outlook in violation of the First Amendment's "establishment clause," or merely be a recognition of the girl's right to express her faith under the "free speech" and "free exercise" clauses.

Brennan says part of her job as superintendent of the 136-student Frenchtown school district is deciding what is appropriate in terms of behavior, dress, and atmosphere at school activities. "We have people of all faiths here, not just Christian. And for me to say 'OK, you'd better believe in this thing,' maybe my Muslim parents wouldn't understand that, nor would their children," Brennan said.

The superintendent said she has no objection to students singing devotional songs professing one's own beliefs. "I have approved many religious songs in my day," she says. "But when you cross that line and say that someone else should believe this particular thing or else . . . then that is why I made the decision I made, because it did cross that line."

Turton disagrees. "We know there are certain guidelines. We are not talking about having a tent revival meeting in the middle of math class," she says. "We are talking about an after-school talent show where children were supposed to be able to perform something of their own choosing that they enjoyed."

Turton adds, "To take that and make it dirty and wrong and icky—that is just wrong. I didn't like seeing my child made to feel that way and I wouldn't want anybody else's kid to feel that way either."

The school's actions are indefensible, said Turton's lawyer, Demetrios Stratis, allied with the Alliance Defense Fund. "They are sending a message to young impressionable minds that religion is somehow radioactive, and it's not," he says. "Students do have the right to sing about their awesome God, especially in this context and in this forum."

The case involves protected student speech rather than government-endorsed speech, agrees the ACLU's Edward Barocas. "This was not a mandatory assignment. This took place at an after-school event that was voluntary where the individual student could decide what song to sing or what skit to perform," Barocas says. "It would be a different analysis if the principal sang the song 'Awesome God' over the loudspeaker at school."

School board lawyer Russell Weiss says Superintendent Brennan has been consistent in strictly imposing her view of what was appropriate for a school talent show. "She required that two other acts be revised to remove content inappropriate for younger students," Weiss writes in his brief to Judge Chesler. "One was a Bon Jovi song called 'You Give Love a Bad Name,' which was revised to change the word 'Hell' to 'Heck.' The other was a passage from Shakespeare (Macbeth Act IV, Scene 1), known as the 'Witches Scene,' which was revised to delete gruesome images, including the complete elimination of all the lines of the Third Witch." Reported in: *Christian Science Monitor*, June 15.

student press

Richmond, Virginia

Two student newspapers at Virginia universities filed a federal lawsuit in June asserting that a state regulation banning alcohol-related ads in college publications violates their constitutional right to freedom of the press.

The American Civil Liberties Union of Virginia, representing Virginia Tech's *Collegiate Times* and the University of Virginia's *Cavalier Daily*, sued the state's Department of Alcoholic Beverage Control in federal district court in Richmond. The state's prohibition on alcohol advertising in student-run publications attempts to curtail underage drinking on college campuses.

But according to the complaint, the restriction not only fails to prevent underage drinking, but also unconstitutionally censors college newspapers. The *Collegiate Times* has a daily circulation of about 14,000, and the *Cavalier Daily* of about 10,000, and both newspapers reach many readers who are age twenty-one or older, the complaint says.

"In order to justify this kind of censorship," Virginia "has to show that it directly advances the goal of addressing underage drinking," said Rebecca K. Glenberg, legal director of the ACLU of Virginia. "I have yet to see evidence of that."

The college newspapers also say that Virginia's regulation puts them at a disadvantage when competing for ad revenue. The annual budgets of both the *Collegiate Times* and the *Cavalier Daily* depend almost exclusively on funds generated from advertising, according to the ACLU's written complaint.

"The law prohibits us from pursuing a potentially large source of revenue," said *Cavalier Daily* editor-in-chief, Michael C. Slaven. He added that other free local newspapers are allowed to publish alcohol-related ads, even though they too are accessible to underage drinkers.

The lawsuit poses a larger question about the right of student news outlets to make their own editorial decisions, said Mark Goodman, executive director of the Student Press Law Center. "It really is fundamentally about a First Amendment issue, and whether the state should have the ability to regulate what ads are published."

In 2004, a federal appeals court struck down a similar regulation in Pennsylvania after the University of Pittsburgh's student newspaper, *The Pitt News*, argued for its right to publish alcohol-related ads. Reported in: *Chronicle of Higher Education* online, June 12.

colleges and universities

Washington, D.C.

The Department of Defense monitored e-mail messages from college students who were planning protests against the war in Iraq and against the military's "don't ask, don't tell" policy against gay and lesbian members of the armed forces, according to surveillance reports released in June. While the department had previously acknowledged monitoring protests on campuses as national-security threats, it was not until recently that evidence surfaced showing that the department was also monitoring e-mail communications that were submitted by campus sources.

The surveillance reports—which were released to lawyers for the Servicemembers Legal Defense Network on June 15 in response to a Freedom of Information Act request filed by the organization last December—concern government surveillance at the State University of New York at Albany, Southern Connecticut State University, the University of California at Berkeley, and William Paterson University of New Jersey. The documents contain copies of e-mail messages sent in the spring semester of 2005 detailing students' plans to protest on-campus military recruitment.

The reports are part of a government database known as Talon that the Department of Defense established in 2003 to keep track of potential terrorist threats. Civilians and military personnel can report suspicious activities through the Talon system using a Web-based entry form. A Pentagon spokesman, Greg Hicks, would not verify whether the reports were follow-ups to tips from military or government personnel, or from civilians at the universities.

The government had already turned over one batch of surveillance reports to the Servicemembers Legal Defense Network in April, which is when the group first became aware that the Pentagon's surveillance program extended to monitoring e-mail communications. After lawyers from both sides settled a dispute over the definition of "surveillance," the Pentagon turned over the latest group of reports.

One e-mail message from the reports, which appears to be from an organizer, describes a protest planned for April 21, 2005, at SUNY-Albany. The message details students' intentions to deliver a petition to the university's president and to hold a rally at which protesters would be "playing anarchist soccer and taking part in a drum circle." The e-mail also includes information about a "Critical Mass bike ride" for later that day in which students could ride their bicycles to express "solidarity with Earth Day."

That the government would monitor such seemingly innocuous e-mail messages raises concerns about First Amendment and privacy rights, according to Steve R. Ralls, director of communications for the Servicemembers Legal Defense Network.

"It's always both surprising and disturbing to learn that our federal government believes the exercise of constitutional liberties should be a threat to our national security," he said. "The student groups who were the subject of the Pentagon surveillance campaign were simply exercising their freedom of speech, and that is what makes our nation stronger, not more vulnerable."

Kermit L. Hall, president of SUNY-Albany, said that he had not yet seen the documents, but that "when it comes to any kind of surveillance, especially on the 'don't ask, don't tell' issue, I am very unsympathetic to the intrusion of the government into an area where I believe it is simply inappropriate."

He said that the university's lawyer was looking into the details of the surveillance, and would try to determine whether the e-mail messages were actively intercepted or obtained in some other way—a distinction that would affect how the university proceeds.

The reports in question were removed from the Pentagon database following an in-house review of the Talon reporting system earlier this year, which concluded that all Talon reports must relate to international terrorist activity. As such, reports that "did not contain a foreign-terrorist-threat nexus" were removed.

The Talon reporting system gained national attention in December 2005 when NBC News obtained a copy of a four-hundred-page Department of Defense document listing more than fifteen hundred "suspicious incidents" that had taken place across the country. Only twenty-one pages were released to the Servicemembers Legal Defense Network, since the group requested only documents related to lesbian, gay, bisexual, and transgender individuals and student groups. Hicks would not disclose the total number of reports that have been filed under the Talon program. Reported in: *Chronicle of Higher Education* online, July 6.

Washington, D.C.

A group of scholars and students sued the U.S. Treasury Department June 13 in an effort to force the Bush administration to rescind rules changes made in 2004 that have choked off most academic travel to Cuba. The department is in charge of enforcing the U.S. economic embargo against Cuba.

The suit, filed in a federal district court in Washington, asserts that the restrictions violate academic freedom and go beyond what is authorized by law. "The government doesn't have the right to tell you how long a course should be, who can take it, and who can teach it," said Wayne S. Smith, an adjunct professor at the Johns Hopkins University and one of the lead plaintiffs.

Academic institutions wanting to send students or scholars to Cuba must obtain a license from the Treasury Department's Office of Foreign Assets Control. Under the tightening of regulations that took place in June 2004, licenses for study in Cuba are now issued only for programs lasting a minimum of ten weeks. To participate, students must be enrolled in a full-time degree program at the institution holding the license, and only full-time tenured faculty members from the same institution may teach in such programs.

"I can no longer accompany the student groups since I am an adjunct professor," said Smith, who is head of the Cuba Exchange Program at Johns Hopkins and a former diplomat who led the U.S. Interests Section in Havana from 1979 to 1982.

In any case, Johns Hopkins has stopped sending students to the island since its programs lasted less than ten weeks. Scholars active in Cuban studies say many of the programs at American institutions were held between semesters, or as intensive summer programs, with less than a semester's duration.

Smith estimates that before the tightening of the regulations, there were close to two hundred U.S. academic programs sending students to Cuba. "Now there are only a handful," he said.

The other plaintiffs are John W. Cotman, an associate professor of political science at Howard University; Jessica Kamen and Adnan Ahmad, both undergraduate students at Johns Hopkins; and the Emergency Coalition to Defend Educational Travel, a group of over 450 faculty members and other higher-education professionals.

The suit asks simply that the restrictions imposed in 2004 be withdrawn. It names as defendants the secretary of the treasury, John W. Snow, and Barbara C. Hammerle, acting director of the department's Office of Foreign Assets Control.

The plaintiffs allege that the restrictions are unconstitutional since they go beyond what is authorized by the Trading With the Enemy Act, the legal basis of the embargo against Cuba. The restrictions "are not rationally related to that statute's purely economic purpose of denying trade and hard currency to Cuba," the plaintiffs said in a written statement.

"The new restrictions are therefore arbitrary, capricious, and not in accordance with the law," they said.

The Bush administration says it tightened the restrictions in 2004 to do more to keep Cuba from earning hard currency and because of concerns that students in some shorter programs were engaging more in tourism than in academic activities. Molly B. Millerwise, a spokeswoman for the Treasury Department, defended the ban on shorter study programs in Cuba. "One of the objectives of the license for academic travel," she wrote, "is to provide a real opportunity for U.S. persons to become true scholars or experts on Cuba. . . . Obviously, most people would have a much better chance of obtaining this level of knowledge and expertise during a ten-week academic trip to Cuba rather than a weeklong stay, for instance."

John H. Coatsworth, director of the David Rockefeller Center for Latin American Studies at Harvard University, says that the center can no longer send students to study in Cuba and that since April 2005, none of the sixteen Cubans it has invited as visiting scholars have been granted a U.S. visa.

In addition, Harvard's license to conduct academic programs in Cuba expired at the end of last year, and the Treasury Department has not renewed it. The government has not provided the institution with an explanation.

The administration's policy on Cuba "is harmful to academics and students," said Coatsworth. "It is corrupt," he added, "and only makes sense in terms of domestic politics."

Higher-education officials say they fear that an awaited administration report on Cuba may announce further tightening of restrictions on academic exchanges with Cuba. The expected report is a follow-up to one issued by the State Department in 2004, on the basis of recommendations by the Commission for Assistance to a Free Cuba. The earlier report called for the restrictions now in place.

Also on June 13, the American Civil Liberties Union of Florida filed a lawsuit in the U.S. District Court for the Southern District of Florida, challenging the constitutionality of the recently signed state law banning Florida's public universities from using private, state, or federal funds for travel to Cuba and certain other countries. Reported in: *Chronicle of Higher Education* online, June 14.

Stony Brook, New York

A professor from Greece on his way to an academic conference in June at the State University of New York at Stony Brook was detained on his arrival at a New York airport, questioned for several hours about his political views, and then put on a flight back to Athens.

The incident drew protests from the conference organizer and from the American Association of University

Professors, which called the expulsion "one more instance" of the Bush administration's "seeming disregard for our society's commitment to academic freedom."

The professor, John Milios, is a faculty member at the National Technical University of Athens and specializes in political economy and the history of economic thought. He was scheduled to present a paper at "How Class Works—2006," a three-day conference attended by some 200 scholars from various countries and organized by Stony Brook's Center for Study of Working Class Life.

When Milios arrived at John F. Kennedy International Airport on June 8, the day the conference began, federal officials denied him entry into the country. Milios said that border officials gave him no explanation. "They just said my visa was canceled due to some technical difficulties," he said.

Then he was interviewed for several hours, he said, by federal agents who questioned him about his "political beliefs and affiliations." Eight hours later, he was put on a flight to Athens.

In an open letter protesting the expulsion to the Secretary of State, Condoleezza Rice, and the Secretary of Homeland Security, Michael Chertoff, the AAUP stated: "Since 1996 and prior to June 8, he had been allowed entry into the country on five separate occasions to participate in academic meetings." The letter added: "Professor Milios is active in Greek national politics, is a member of the Syriza Party, and has twice been a candidate for the Greek parliament." Milios described the Syriza Party as a "pro-reform communist party."

Janet Rapaport, a spokeswoman for the Department of Homeland Security, said Milios "was inadmissible because the State Department had revoked his visa." However, neither she nor several other representatives at Homeland Security and at the State Department could provide a reason for the visa revocation.

Milios said that after the attention given the expulsion in Greece, he was called to the U.S. Consulate for an hour-long discussion with a consular official. "It was a friendly talk," he said, "but again it was mainly about my political affiliations."

The consular official told him she did not know the reason his visa had been canceled, he said, but told him it might have been connected with his public support of an appeal for the release, on health grounds, of a seriously ill convicted terrorist being held in a Greek prison.

Michael Zweig, director of Stony Brook's Center for Study of Working Class Life, said in a written statement that Milios's absence "was a serious loss to the intellectual life of the conference and the university. The action of U.S. officials on June 8," he said, "isolated American faculty and students from important research results derived overseas and made it impossible for a senior international expert to interact with his colleagues in the United States."

In its open letter, the AAUP cited a similar case from last year. Waskar T. Ari, a Bolivian specialist in the culture and political movements of indigenous people of the Andean region, was hired in August for a tenure-track job at the University of Nebraska at Lincoln. He has not been able to take the job, however, because he has not received a U.S. visa.

The letter stated that Milios's expulsion "appears to be another instance of the government's barring entry of a scholar who wishes to visit this country for legitimate academic reasons." Reported in: *Chronicle of Higher Education* online, June 22.

Richmond, Virginia

Virginia's public and private colleges and universities soon will be required to submit the names and Social Security numbers of tens of thousands of students they accept each year to state police for cross-checking against sexual offender registries.

The little-noticed but groundbreaking law is raising concerns among privacy experts about giving police access to a vast new database of student information. They say the data could be stored permanently on hard drives and mishandled, stolen or used for unrelated homeland security or law enforcement purposes.

Passed this year as part of a crackdown on sex crimes and signed by Gov. Timothy M. Kaine (D), the law also requires Department of Motor Vehicles officials to turn over personal information to police any time a Virginian applies for a license or change of address. It goes into effect July 1.

State police officials said they do not plan to retain the student data for long periods, but the provisions will give law enforcement authorities yearly access to information on tens of thousands of students that they must now request on a case-by-case basis when a crime is committed.

The Virginia law skirts federal prohibitions on disseminating student information by requiring colleges to turn over data after students have been accepted but before they have picked a school and enrolled. Advocates said it will help police track the whereabouts of those who have committed sex crimes and alert college authorities to the presence of such people among students.

"I've got two kids in college right now," said Kenneth W. Stolle (R-Virginia Beach), the bill's chief sponsor in the state senate. "You're going to have a . . . hard time explaining to me why my daughter is living next door to a sexual offender. My guess is every parent out there would have the same expectation that I do."

The bill's provisions represent the latest attempt by authorities nationwide to use modern data collection techniques to foil criminal behavior. In 2002, for example, the PATRIOT Act required banks to monitor transactions by their customers after the Sept. 11, 2001, terrorist attacks.

State DMVs have long shared driver data with tax officials and routinely allow police to make requests for

individual driver data. Officials said the new law is one of the few times that personal identification information automatically will be turned over to law enforcement.

Critics of the law say the information about student applicants from Virginia and across the nation is at risk. In May, a laptop containing the Social Security numbers of as many as 2.2 million veterans, including 80 percent of the nation's active-duty forces, was stolen from a Maryland home.

"It blows the privacy standards away," said Michael Froomkin, a law professor and privacy specialist at the University of Miami. "People ought to be concerned because you never know where your data is going to end up."

Froomkin and others noted that tracking sexual offenders is an important goal. But they said it can be done without casting such a wide net for information. And they questioned whether the information would someday end up being mined for other purposes.

"This is basically providing personal information to the state police for the purpose of conducting a background check on thousands of innocent students with no indication of any wrongdoing on their part," said David Sobel, a D.C. lawyer who specializes in privacy law.

Col. W. Steven Flaherty, superintendent of the Virginia State Police, said the department has no intention of keeping information about students unless an applicant appears on the sexual offender registry. In Virginia, the registry contains about 13,000 names of those convicted of such crimes as statutory rape and child sex abuse.

Authorities use the registry and a similar national one to track the movements of such felons who have served their time and moved back into society.

"Essentially, this information comes to us. We bounce it against the sex offender registry. If we don't get a hit, we don't keep the information," Flaherty said.

Not a single lawmaker in Virginia voted against House Bill 984, primarily designed to stiffen the penalties for sex crimes and add convicted nonviolent offenders to the publicly available registry. Some said they did not recall discussion about the provisions related to information sharing.

"That should have been more closely scrutinized," Senate Minority Leader Richard L. Saslaw (D-Fairfax) said. Student data "shouldn't be handed over willy-nilly like that. I don't know how that slipped through," he said.

The law requires colleges to transmit the information about students before they are enrolled and covered by the federal law known as the Family Educational Rights and Privacy Act.

"It's candidly quite a shock," said Barmak Nassirian, associate executive director of the American Association of Collegiate Registrars and Admissions Officers. "I'm not aware of any other similar release of private information."

Representatives of Virginia's colleges met with state police to determine the proper format for delivering the information and to develop detailed guidelines. College officials said they are still unsure exactly how the system will work. "Whether we have concerns about this or not, it's the law," said Jeff Hannah, a spokesman for the University of Virginia.

Stolle said federal law does not allow state police to keep the student data indefinitely. "You can't stop protecting people because you're afraid that efforts . . . are going to be abused," he said. "I think the benefits outweigh the inconveniences." Reported in: *Washington Post*, June 20.

"state secrets"

Washington, D.C.

Facing a wave of litigation challenging its eavesdropping at home and its handling of terror suspects abroad, the Bush administration is increasingly turning to a legal tactic that swiftly torpedoes most lawsuits: the state secrets privilege.

Officials have used the privilege to win the dismissal of a lawsuit filed by a German man who was abducted and held in Afghanistan for five months and to ask the courts to throw out three legal challenges to the National Security Agency's domestic surveillance program.

But civil liberties groups and some scholars say the privilege claim, in which the government says any discussion of a lawsuit's accusations would endanger national security, has short-circuited judicial scrutiny and public debate of some central controversies of the post-9/11 era.

The privilege has been asserted by the Justice Department more frequently under President Bush than under any of his predecessors—in nineteen cases, the same number as during the entire eight-year presidency of Ronald Reagan, the previous record holder, according to a count by William G. Weaver, a political scientist at the University of Texas at El Paso.

While the privilege, defined by a 1953 Supreme Court ruling, was once used to shield sensitive documents or witnesses from disclosure, it is now often used to try to snuff out lawsuits at their inception, Weaver and other legal specialists say.

"This is a very powerful weapon for the executive branch," said Weaver, who has a law degree and is a co-author of one of the few scholarly articles examining the privilege. "Once it's asserted, in almost every instance it stops the case cold."

Robert M. Chesney, a law professor at Wake Forest University who is studying the recent use of the privilege, said the administration's legal strategy "raises profound legal and policy questions that will be the subject of intense debate for the foreseeable future."

Some members of Congress also have doubts about the way the privilege has been used. A bill approved by

the House Government Reform Committee would limit its use in blocking whistle-blowers' lawsuits. "If the very people you're suing are the ones who get to use the state secrets privilege, it's a stacked deck," said Representative Christopher Shays, Republican of Connecticut, who proposed the measure and has campaigned against excessive government secrecy.

Yet courts have almost always deferred to the secrecy claims; Weaver said he believed that the last unsuccessful assertion of the privilege was in 1993. Steven Aftergood, an expert on government secrecy at the Federation of American Scientists, said, "It's a sign of how potent the national security mantra has become.''

Under President Bush, the secrets privilege has been used to block a lawsuit by a translator at the Federal Bureau of Investigation, Sibel Edmonds, who was fired after accusing colleagues of security breaches; to stop a discrimination lawsuit filed by Jeffrey Sterling, a Farsi-speaking, African American officer at the Central Intelligence Agency; and to derail a patent claim involving a coupler for fiber-optic cable, evidently to guard technical details of government eavesdropping.

Such cases can make for oddities. Mark S. Zaid, who has represented Edmonds, Sterling, and other clients in privilege cases, said he had seen his legal briefs classified by the government and had been barred from contacting a client because his phone line was not secure.

"In most state secrets cases, the plaintiffs' lawyers don't know what the alleged secrets are,'' Zaid said.

More recently the privilege has been wielded against lawsuits challenging broader policies, including the three lawsuits attacking the National Security Agency's eavesdropping program—one against AT&T by the Electronic Frontier Foundation in San Francisco and two against the federal government by the American Civil Liberties Union in Michigan and the Center for Constitutional Rights in New York.

In a filing in the New York case, John D. Negroponte, the director of national intelligence, wrote that allowing the case to proceed would "cause exceptionally grave damage to the national security of the United States" because it "would enable adversaries of the United States to avoid detection." Negroponte said he was providing more detail in classified filings.

Those cases are still pending. Two lawsuits challenging the government's practice of rendition, in which terror suspects are seized and delivered to detention centers overseas, were dismissed after the government raised the secrets privilege.

One plaintiff, Maher Arar, a Syrian-born Canadian, was detained while changing planes in New York and was taken to Syria, where he has said he was held in a tiny cell and beaten with electrical cables. The other, Khaled el-Masri, a German of Kuwaiti origin, was seized in Macedonia and taken to Afghanistan, where he has said he was beaten and injected with drugs before being released in Albania.

The United States never made public any evidence linking either man to terrorism, and both cases are widely viewed as mistakes. Arar's lawsuit was dismissed in February on separate but similar grounds from the secrets privilege, a decision he is appealing. A federal judge in Virginia dismissed Masri's lawsuit on May 18, accepting the government's secrets claim.

One frustration of the plaintiffs in such cases is that so much information about the ostensible state secrets is already public. Arar's case has been examined in months of public hearings by a Canadian government commission, and Masri's story has been confirmed by American and German officials and blamed on a mix-up of similar names. The NSA program has been described and defended in numerous public statements by Bush and other top officials and in a forty-two-page Justice Department legal analysis.

In the ACLU lawsuit charging that the security agency's eavesdropping is illegal, Ann Beeson, the group's associate legal director, acknowledged that some facts might need to remain secret. "But you don't need those facts to hear this case," she said. "All the facts needed to try this case are already public."

Brian Roehrkasse, a Justice Department spokesman, said he could not discuss any specific case. But he said the state secrets privilege "is well established in federal law and has been asserted many times in our nation's history to protect our nation's secrets."

Other defenders of the administration's increasing use of the privilege say it merely reflects proliferating lawsuits. In all of the NSA cases, for instance, "it's the same secret they're trying to protect," said H. Bryan Cunningham, a Denver lawyer who served as a legal advisor to the National Security Council under Bush. Cunningham said that under well-established precedent, judges must defer to the executive branch in deciding what secrets must be protected.

But critics of the use of the privilege point out that officials sometimes exaggerate the sensitivities at risk. In fact, documents from the 1953 case that defined the modern privilege, *United States* v. *Reynolds*, have been declassified in recent years and suggest that Air Force officials misled the court.

An accident report on a B-29 bomber crash in 1948 was withheld because the Air Force said it included technical details about sensitive intelligence equipment and missions, but it turned out to contain no such information, said Wilson M. Brown III, a lawyer in Philadelphia who represented survivors of those who died in the crash in recent litigation.

"The facts the Supreme Court was relying on in *Reynolds* were false," Brown said in an interview. "It shows that if the government is not truthful, plaintiffs will lose and there's very little chance to straighten it out." Reported in: *New York Times*, June 4.

broadcasting

Washington, D.C.

Congress gave notice to broadcasters June 7 that they would pay dearly for showing material like Janet Jackson's 2004 Super Bowl "wardrobe malfunction," passing legislation that would multiply indecency fines ten times.

The 379–35 House vote on the Broadcast Decency Enforcement Act sent the bill to President Bush for his signature. The bill, which the Senate has passed, increases the top indecency fine that the Federal Communications Commission can levy to $325,000 for each incident, from $32,500.

Bush said he looked forward to signing the legislation into law. "This legislation will make television and radio more family-friendly by allowing the FCC to impose stiffer fines on broadcasters who air obscene or indecent programming," he said in a statement.

The bill does not apply to cable or satellite broadcasts, which are not included in FCC rules on public broadcasts, and does not try to define what is indecent.

Under FCC rules and federal law, radio stations and over-the-air television channels cannot show obscene material at any time, and cannot show indecent material from 6 A.M. to 10 P.M., when children are more likely to be in the audience.

The legislation faced little resistance in Congress, but detractors said that it could erode First Amendment rights. "What is at stake here is freedom of speech and whether it will be nibbled to death by election-minded politicians and self-righteous pietists," Representative Gary Ackerman, Democrat of New York, said in a statement.

The National Association of Broadcasters said it would prefer that the nation's 13,000 radio stations and 1,700 TV stations police themselves. "Self-regulation is preferable to government regulation," Dennis Wharton, an agency spokesman, said.

The measure, given impetus by the momentary exposure of Jackson's breast during the 2004 Super Bowl halftime show, was a priority for conservative groups. The FCC recently denied a petition of reconsideration from stations owned by CBS, which are facing $550,000 in fines over the incident. Since that incident, many broadcasters have voluntarily policed broadcasts through means like five-second delays on live broadcasts.

In a later development, CBS affiliates argued that virtually none of those who complained to the Federal Communications Commission about the drama *Without A Trace* actually saw the episode in question, as they asked the agency to rescind its proposed record indecency fine of $3.3 million for a broadcast involving the show.

All of the 4,211 e-mailed complaints came from Web sites operated by the Parents Television Council and the American Family Association, the stations said in a filing June 12. In only two of the emails did those complaining say they had watched the program, and those two apparently refer to a "brief, out-of-context segment" of the episode that was posted on the Parents Television Council's Web site, the affiliates' filing said.

"There were no true complainants from actual viewers," the stations said. To be valid, complaints must come from an actual viewer in the service area of the station at issue, the filing said.

"The e-mails were submitted . . . because advocacy groups hoping to influence television content generally exhorted them to contact the commission," the CBS stations said.

L. Brent Bozell, president of the Parents Television Council, said that "everything the PTC has said is accurate. Every complaint filed comes from a United States citizen who, last I heard, had the constitutional privilege to petition his government," Bozell said. "Rather than these stupid legal maneuvers, CBS and Viacom should spend time pondering why it's wrong to broadcast scenes of teen orgies in front of millions of children."

Parents Television Council said it relayed 11,679 complaints about *Without a Trace* to the FCC through its Web site. The CBS stations in their filing said they examined complaints the FCC produced to satisfy a request filed under the Freedom of Information Act.

About 8.2 million people saw the December 31, 2004 broadcast, which was a repeat of an earlier airing of the same episode that drew no indecency complaints. E-mails about the episode began arriving at the FCC on January 12, the same day the PTC sent an alert to its members, the CBS stations said.

The FCC in proposing the fines of $32,500 upon each of 103 CBS stations said they had "broadcast material graphically depicting teenage boys and girls participating in a sexual orgy."

CBS stations said the episode included flashbacks aimed at portraying risky behavior that showed actors in "sexually suggestive positions" but without nudity or coarse language. Reported in: *New York Times*, June 8; mediaweek.com, June 13.

Internet

Washington, D.C.

The Justice Department is asking Internet companies to keep records on the Web-surfing activities of their customers to aid law enforcement, and may propose legislation to force them to do so.

The director of the Federal Bureau of Investigation, Robert S. Mueller, III, and Attorney General Alberto R. Gonzales held a meeting in Washington in late May where

they offered a general proposal on record-keeping to a group of senior executives from Internet companies, said Brian Roehrkasse, a spokesman for the department. The meeting included representatives from America Online, Microsoft, Google, Verizon, and Comcast.

The attorney general has appointed a task force of department officials to explore the issue, and that group held another meeting with a broader group of Internet executives, Roehrkasse said. The department also met with a group of privacy experts.

The Justice Department is not asking the Internet companies to give it data about users, but rather to retain information that could be subpoenaed through existing laws and procedures, Roehrkasse said. While initial proposals were vague, executives from companies said they gathered that the department was interested in records that would allow them to identify which individuals visited certain Web sites and possibly conducted searches using certain terms. It also wants the Internet companies to retain records about whom their users exchange e-mail with, but not the contents of e-mail messages, the executives said.

The proposal and the initial meeting were first reported by *USA Today* and CNet News.com.

The department proposed that the records be retained for as long as two years. Most Internet companies discard such records after a few weeks or months. In its current proposal, the department appears to be trying to determine whether Internet companies will voluntarily agree to keep certain information or if it will need to seek legislation to require them to do so.

The request came as the government has been trying to extend its power to review electronic communications in several ways. The *New York Times* reported in December that the National Security Agency had gained access to phone and e-mail traffic with the cooperation of telecommunications companies, and *USA Today* reported in May that the agency had collected telephone calling records. The Justice Department has subpoenaed information on Internet search patterns—but not the searches of individuals—as it tries to defend a law meant to protect children from pornography.

In a speech in April, Gonzales said that investigations into child pornography had been hampered because Internet companies had not always kept records that would help prosecutors identify people who traded in illegal images.

"The investigation and prosecution of child predators depends critically on the availability of evidence that is often in the hands of Internet service providers,'' Gonzales said in remarks at the National Center for Missing and Exploited Children in Alexandria, Virginia. "This evidence will be available for us to use only if the providers retain the records for a reasonable amount of time," he said.

An executive of one Internet provider that was represented at the first meeting said Gonzales began the discussion by showing slides of child pornography from the Internet. But later, one participant asked Mueller why he was interested in the Internet records. The executive said Mueller's reply was, "We want this for terrorism."

At the meeting with privacy experts, Justice Department officials focused on wanting to retain the records for use in child pornography and terrorism investigations. But they also talked of their value in investigating other crimes like intellectual property theft and fraud, said Marc Rotenberg, executive director of the Electronic Privacy Information Center in Washington, who attended the session.

"It was clear that they would go beyond kiddie porn and terrorism and use it for general law enforcement," Rotenberg said.

Kate Dean, the executive director of the United States Internet Service Provider Association, a trade group, said: "When they said they were talking about child pornography, we spent a lot of time developing proposals for what could be done. Now they are talking about a whole different ball of wax."

At the meeting with privacy groups, officials sought to assuage concerns that the retention of the records could compromise the privacy of Americans. But Rotenberg said he left with lingering concerns.

"This is a sharp departure from current practice," he said. "Data retention is an open-ended obligation to retain all information on all customers for all purposes, and from a traditional Fourth Amendment perspective, that really turns things upside down."

Executives of several Internet companies that participated in the first meeting said the department's initial proposals seemed expensive and unwieldy. Reported in: *New York Times*, June 2.

Washington, D.C.

By a 410–15 vote July 26, the House of Representatives approved a bill that would effectively require that "chat rooms" and "social networking sites" be rendered inaccessible to minors accessing the sites from schools or libraries. Adults can ask for permission to access the sites.

"Social networking sites such as MySpace and chat rooms have allowed sexual predators to sneak into homes and solicit kids," said Rep. Ted Poe, a Texas Republican and co-founder of the Congressional Victim's Rights Caucus. "This bill requires schools and libraries to establish (important) protections."

Even though politicians apparently meant to restrict access to MySpace, the definition of off-limits Web sites is so broad the bill would probably sweep in thousands of commercial Web sites that allow people to post profiles, include personal information and allow "communication among users." Details will be left up to the Federal Communications Commission.

The list could include Slashdot, which permits public profiles; Amazon, which allows author profiles and personal lists; and blogs like RedState.com that show public profiles. In addition, many media companies, such as News .com publisher CNET Networks, permit users to create profiles of favorite games and music.

"While targeted at MySpace, the effects are far more wide-ranging than that, including sites like LinkedIn," said Mark Blafkin, a representative of the Association for Competitive Technology, which counts small- to medium-size technology companies as members. "Nearly any news site now permits these types of behaviors that the bill covers."

House Republicans have enlisted the Deleting Online Predators Act, or DOPA, as part of a poll-driven effort to address topics that they view as important to suburban voters in advance of November's elections. Republican pollster John McLaughlin surveyed twenty-two suburban districts and presented his research at a retreat earlier this year. DOPA was part of the result.

DOPA does not define "chat rooms" or "social networking sites" and leaves that up to the Federal Communications Commission. It does offer the FCC some guidance on defining social networking sites (though not chat rooms): "In determining the definition of a social networking Web site, the Commission shall take into consideration the extent to which a Web site—(i) is offered by a commercial entity; (ii) permits registered users to create an online profile that includes detailed personal information; (iii) permits registered users to create an online journal and share such a journal with other users; (iv) elicits highly personalized information from users; and (v) enables communication among users."

"Social networking sites, best known by the popular examples of MySpace, Friendster, and Facebook, have literally exploded in popularity in just a few short years," said Rep. Mike Fitzpatrick, a Pennsylvania Republican and one of DOPA's original sponsors. Now, he added, those Web sites "have become a haven for online sexual predators who have made these corners of the Web their own virtual hunting ground."

Fitzpatrick's re-election campaign is one reason why the Republican leadership, which is worried about retaining their slender House majority, arranged a vote on DOPA. Fitzpatrick, who represents a politically moderate district outside of Philadelphia, has found himself in a tight race against challenger Patrick Murphy, an Iraq War veteran and prosecutor.

Technology lobbying groups, which were taken by surprise by the speedy approval of DOPA in the House, were scrambling to throw up roadblocks to the measure in the Senate. Some expect that the Senate leadership will hold a vote as early as next week. Libraries also oppose the measure.

In a statement issued July 26, ALA President Leslie Burger said: "ALA is disappointed by the House's passage (410–15) today of H.R. 5319, the 'Deleting Online Predators Act' (DOPA). This unnecessary and overly broad legislation will hinder students' ability to engage in distance learning and block library computer users from accessing a wide array of essential Internet applications including instant messaging, email, wikis, and blogs.

"Under DOPA, people who use library and school computers as their primary conduits to the Internet will be unfairly blocked from accessing some of the web's most powerful emerging technologies and learning applications. As libraries are already required to block content that is "harmful to minors" under the Children's Internet Protection Act (CIPA), DOPA is redundant and unnecessary legislation.

"Librarians are very concerned with the need to protect children from online predators, and we know that the best way to protect our kids from harm is by teaching them to make wise choices online."

"This bill is well intentioned, but it is highly overbroad and would create big obstacles to accessing sites that pose no risk to children," said Jim Halpert, a partner at law firm DLA Piper Rudnick Gray Cary, who is the general counsel for the Internet Commerce Coalition.

In a statement earlier in June, a representative of MySpace—now owned by Rupert Murdoch's News Corp.—stressed that the company has taken steps to assuage concerns among parents and politicians. It has assigned some one hundred employees, about one-third of its work force, to deal with security and customer care, and hired Hemanshu (Hemu) Nigam, a former Justice Department prosecutor, as its chief security officer.

DOPA has changed since an earlier version dated May 9. The version approved by the House does not define "chat rooms" and gives more leeway to the FCC in devising a category of prohibited Web sites. Both versions apply only to schools and libraries that accept federal funding, which the American Library Association estimates covers at least two-thirds of libraries. By slapping additional regulations on "e-rate" federal funding, DOPA effectively expands an earlier law called the Children's Internet Protection Act, which requires libraries to filter sexually explicit material and which the Supreme Court upheld as constitutional in 2003.

Opponents of DOPA said during the debate that it was rushed through the political process and had not even been approved by a congressional committee. "So now we are on the floor with a piece of legislation poorly thought out, with an abundance of surprises, which carries with it that curious smell of partisanship and panic, but which is not going to address the problems," said Rep. John Dingell, a Michigan Democrat. "This is a piece of legislation which is going to be notorious for its ineffectiveness and, of course,

for its political benefits to some of the members hereabout." Reported in: *New York Times*, July 27.

privacy

Washington, D.C.

Under a secret Bush administration program initiated weeks after the September 11 attacks, counterterrorism officials have gained access to financial records from a vast international database and examined banking transactions involving thousands of Americans and others in the United States, according to government and industry officials.

The program is limited, government officials say, to tracing transactions of people suspected of having ties to Al-Qaeda by reviewing records from the nerve center of the global banking industry, a Belgian cooperative that routes about $6 trillion daily between banks, brokerages, stock exchanges and other institutions. The records mostly involve wire transfers and other methods of moving money overseas and into and out of the United States. Most routine financial transactions confined to this country are not in the database.

Viewed by the Bush administration as a vital tool, the program has played a hidden role in domestic and foreign terrorism investigations since 2001 and helped in the capture of the most wanted Al-Qaeda figure in Southeast Asia, the officials said.

The program, run out of the Central Intelligence Agency and overseen by the Treasury Department, "has provided us with a unique and powerful window into the operations of terrorist networks and is, without doubt, a legal and proper use of our authorities," Stuart Levey, an undersecretary at the Treasury Department, said.

The program is grounded in part on the president's emergency economic powers, Levey said, and multiple safeguards have been imposed to protect against any unwarranted searches of Americans' records.

The program, however, is a significant departure from typical practice in how the government acquires Americans' financial records. Treasury officials did not seek individual court-approved warrants or subpoenas to examine specific transactions, instead relying on broad administrative subpoenas for millions of records from the cooperative, known as Swift.

That access to large amounts of confidential data was highly unusual, several officials said, and stirred concerns inside the administration about legal and privacy issues. "The capability here is awesome or, depending on where you're sitting, troubling,'' said one former senior counterterrorism official who considers the program valuable. While tight controls are in place, the official added, "the potential for abuse is enormous."

The program is separate from the National Security Agency's efforts to eavesdrop without warrants and collect domestic phone records, operations that have provoked fierce public debate and spurred lawsuits against the government and telecommunications companies.

But all the programs grew out of the Bush administration's desire to exploit technological tools to prevent another terrorist strike, and all reflect attempts to break down longstanding legal or institutional barriers to the government's access to private information about Americans and others inside the United States.

Officials described the Swift program as the biggest and most far-reaching of several secret efforts to trace terrorist financing. Much more limited agreements with other companies have provided access to ATM transactions, credit card purchases, and Western Union wire payments, the officials said.

Data from the Brussels-based banking consortium, formally known as the Society for Worldwide Interbank Financial Telecommunication, has allowed officials from the CIA, the Federal Bureau of Investigation, and other agencies to examine "tens of thousands" of financial transactions, Levey said.

While many of those transactions have occurred entirely on foreign soil, officials also have been keenly interested in international transfers of money by individuals, businesses, charities and other groups under suspicion inside the United States, officials said. A small fraction of Swift's records involve transactions entirely within this country, but Treasury officials said they were uncertain whether any had been examined.

Swift executives have been uneasy at times about their secret role, the government and industry officials said. By 2003, the executives told American officials they were considering pulling out of the arrangement, which began as an emergency response to the September 11 attacks, the officials said. Worried about potential legal liability, the Swift executives agreed to continue providing the data only after top officials, including Alan Greenspan, then chairman of the Federal Reserve, intervened. At that time, new controls were introduced.

Among the safeguards, government officials said, is an outside auditing firm that verifies that the data searches are based on intelligence leads about suspected terrorists. "We are not on a fishing expedition," Levey said. "We're not just turning on a vacuum cleaner and sucking in all the information that we can."

Swift and Treasury officials said they were aware of no abuses. But Levey, the Treasury official, said one person had been removed from the operation for conducting a search considered inappropriate.

Treasury officials said Swift was exempt from American laws restricting government access to private financial records because the cooperative was considered a messaging service, not a bank or financial institution.

But at the outset of the operation, Treasury and Justice Department lawyers debated whether the program had to

comply with such laws before concluding that it did not, people with knowledge of the debate said. Several outside banking experts, however, say that financial privacy laws are murky and sometimes contradictory and that the program raises difficult legal and public policy questions.

Swift's database provides a rich hunting ground for government investigators. Swift is a crucial gatekeeper, providing electronic instructions on how to transfer money among 7,800 financial institutions worldwide. The cooperative is owned by more than 2,200 organizations, and virtually every major commercial bank, as well as brokerage houses, fund managers and stock exchanges, uses its services. Swift routes more than eleven million transactions each day, most of them across borders.

The cooperative's message traffic allows investigators, for example, to track money from the Saudi bank account of a suspected terrorist to a mosque in New York. Starting with tips from intelligence reports about specific targets, agents search the database in what one official described as a "24–7" operation. Customers' names, bank account numbers and other identifying information can be retrieved, the officials said.

The data does not allow the government to track routine financial activity, like ATM withdrawals, confined to this country, or to see bank balances, Treasury officials said. And the information is not provided in real time—Swift generally turns it over several weeks later. Because of privacy concerns and the potential for abuse, the government sought the data only for terrorism investigations and prohibited its use for tax fraud, drug trafficking or other inquiries, the officials said.

Because Swift is based overseas and has offices in the United States, it is governed by European and American laws. Several international regulations and policies impose privacy restrictions on companies that are generally regarded as more stringent than those in this country. United States law establishes some protections for the privacy of Americans' financial data, but they are not ironclad. A 1978 measure, the Right to Financial Privacy Act, has a limited scope and a number of exceptions, and its role in national security cases remains largely untested.

Several people familiar with the Swift program said they believed that they were exploiting a "gray area'' in the law and that a case could be made for restricting the government's access to the records on Fourth Amendment and statutory grounds. They also worried about the impact on Swift if the program were disclosed.

One person involved in the Swift program estimated that analysts had reviewed international transfers involving "many thousands" of people or groups in the United States. Two other officials placed the figure in the thousands. Levey said he could not estimate the number.

The Bush administration has pursued steps that may provide some enhanced legal standing for the Swift program. In late 2004, Congress authorized the Treasury Department to develop regulations requiring American banks to turn over records of international wire transfers. Officials say a preliminary version of those rules may be ready soon. One official described the regulations as an attempt to "formalize'' access to the kind of information secretly provided by Swift, though other officials said the initiative was unrelated to the program.

The idea for the Swift program, several officials recalled, grew out of a suggestion by a Wall Street executive, who told a senior Bush administration official about Swift's database. Few government officials knew much about the consortium, which is led by a Brooklyn native, Leonard H. Schrank, but they quickly discovered it offered unparalleled access to international transactions. Swift, a former government official said, was "the mother lode, the Rosetta stone'' for financial data.

Intelligence officials were so eager to use the Swift data that they discussed having the CIA covertly gain access to the system, several officials involved in the talks said. But Treasury officials resisted, the officials said, and favored going to Swift directly.

In 1976, the Supreme Court ruled that Americans had no constitutional right to privacy for their records held by banks or other financial institutions. In response, Congress passed the Right to Financial Privacy Act two years later, restricting government access to Americans' banking records. In considering the Swift program, some government lawyers were particularly concerned about whether the law prohibited officials from gaining access to records without a warrant or subpoena based on some level of suspicion about each target.

For many years, law enforcement officials have relied on grand-jury subpoenas or court-approved warrants for such financial data. Since 9/11, the FBI has turned more frequently to an administrative subpoena, known as a National Security Letter, to demand such records.

After an initial debate, Treasury Department lawyers, consulting with the Justice Department, concluded that the privacy laws applied to banks, not to a banking cooperative like Swift. They also said the law protected individual customers and small companies, not the major institutions that route money through Swift on behalf of their customers.

Other state, federal, and international regulations place different and sometimes conflicting restrictions on the government's access to financial records. Some put greater burdens on the company disclosing the information than on the government officials demanding it.

Among their considerations, American officials saw Swift as a willing partner in the operation. But Swift said its participation was never voluntary. "Swift has made clear that it could provide data only in response to a valid subpoena," according to its written statement.

(continued on page 259)

libraries

Lawrenceville, Georgia

After a public outcry, the budget for Spanish fiction will be restored to the Gwinnett County Public Library, members of the board of trustees said June 26. "We heard from people on both sides of the issue and we heard from a lot of the press," board Chair Lloyd Breck said. "We are choosing to restore that line item. . . . We were not trying to send any signal, but everyone seemed to think we were."

The board's decision to cut $3,000 for Spanish translations of popular books at a meeting earlier in the month received attention in newspapers across the country. In the week following the news, board members received letters and e-mails from as far away as California and New Zealand from writers, professors and editors. Board member Brett Taylor said about half of the letters were in favor of the decisions and half were against it.

"There were plenty of people who just saw an inequity in this and an injustice," he said. "I think it's great they are reconsidering this. I didn't really expect them to." Taylor did not vote on the library's budget because he, along with hundreds of other audience members, left the last meeting after the board voted to fire then-Director Jo Ann Pinder without cause.

Dale Todd, the board treasurer, said she felt misunderstood about the halt to Spanish fiction. She described the vote to reverse the move as a "clarification."

When the county's thirteenth library branch opened at Dacula with the new Spanish section, Todd said she was surprised at how empty the shelves appeared. She got the numbers and found out that $2,400.40 was spent on books on CD—an average of $64.88 each for 37 titles, which would have cost $2.77 for the same book in paperback. Only $694.49 was spent on printed material, she said.

"We can service 23.5 more customers buying hardcovers," she said. "It's about using our tax dollars wisely. It's not the material. It's not the language. The medium is the focus." The item was pulled, she said, so the board could do more research before deciding what to do. Todd said she would like to see the library do a market study on how to get more county residents to use the library in general and include the language question within it. In addition to the county's large Spanish-speaking population, Todd said she could see English speakers using the section to try to learn the language better. Educational materials in Spanish have not been affected by the decision.

Breck said he was more concerned about fairness across the cultural spectrum. While the county's population is about 15 percent Hispanic, Breck pointed out that there were also large populations of Chinese, Vietnamese, Nigerians, Romanians and Bosnians. "We can't put multiple foreign languages in," he said.

While the only branch that has a large Spanish fiction section is the Dacula branch, Breck said he wasn't sure where the $3,000 in new materials would go. He said most of the educational materials are in the Peachtree Corners and Norcross branches, but the staff would determine the location of the books. Reported in: *Gwinnett Daily Post*, June 27.

Southbridge, Massachusetts

A town councilor in Southbridge called for a boycott of the Jacob Edwards Library if it proceeded with a fundraiser featuring a gay author and two displays marking June as national Gay Pride Month. James J. Marino, Sr., made his comments at a forum of the town council. The fundraiser, scheduled for June 21, was to feature Gregory Maguire, author of the novel *Wicked*, the basis for the hit Broadway musical. Maguire, who has written numerous books for children, also contributed to *Am I Blue?: Coming Out from the Silence*, a collection of short stories for gay and lesbian teenagers. At a June 12 council meeting, library trustees told Marino they would go forward with the event.

The displays included gay-themed pamphlets and T-shirts, books such as Ethan Mordden's *I've a Feeling We're Not in Kansas Anymore*: *Tales from Gay Manhattan*, and books and memorabilia about L. Frank Baum's Oz series.

Library Director James D. Patterson said the library is "careful not to have political displays unless in the context of history." He added that the library does not receive town

funding for programs. Reported in: *American Libraries* Online, June 16.

San Antonio, Texas

The library of the University of the Incarnate Word, a private Catholic university in San Antonio, announced June 30 that it was reinstating its print subscription to the *New York Times* only two days after ordering its cancellation. Dean of Library Services Mendell D. Morgan, Jr., said in a hastily called press conference in front of the library that he did not think his original decision was inappropriate but that he regretted failing to confer beforehand with other library staff.

Morgan had sent an e-mail to library staff the morning of June 28 ordering the newspaper's cancellation because it had exposed a secret government program to monitor international banking transactions. But library staffers Jennifer Romo and Tom Rice criticized the action publicly, telling local newspapers they thought it was wrong to deny students access to the *New York Times* because of a personal disagreement with its coverage. Reported in: *American Libraries* Online, July 7.

Loudoun County, Virginia

An effort to remove *Braveheart*, *The Passion of the Christ*, *Saving Private Ryan*, various Shakespeare adaptations and any other R-rated DVD from public libraries hit a wall in early July when the Loudoun Library Board of Trustees rejected a request from county supervisors to stop purchasing adult-oriented videos. The trustees voted 7–2, with the majority arguing that the move would amount to censorship, set a new precedent about product collection and impede educational opportunities.

Margi Wallo, who was appointed as a trustee by Supervisor Eugene Delgaudio (R-Sterling), argued that limiting R-rated DVDs would protect the taxpayers' wallets and their morality as well. Delgaudio and Supervisor Lori Waters had targeted the proposed purchase of some DVDs as part of a larger purchase of new library material during a recent board meeting.

"I think that the library is a privilege," Wallo said during the meeting. "It is an extra. It's not something you need to have. It's a nice thing to have. R-rated movies aren't an essential item. R-rated movies can be obnoxious. I think if we can draw a line, that's a good place. I think there are an awful lot of movies that can be provided that the public can enjoy. But I am against a policy of taking money from the taxpayer with an underlying motive of undermining morality, taking money to change society."

Those seventeen and under in Loudoun County need a parent's permission to check out an R-rated DVD from the library.

The purchase of DVDs amounts to a miniscule .017 percent of the library's budget, according to trustee Judy Coughlin. It's far less when compared to the overall billion-dollar-plus county budget. The library system has 441 R-rated DVDs, Coughlin said.

Trustee Scott Stewart warned that limiting the purchase of R-rated DVDs is a "dangerous step down the road toward censorship."

"I would note popular books can be racy as well," Stewart said. "Some books movies are based on are also in our collection. We've explored this area before and it cost this board over $100,000 in lawyers' fees and damages for Internet filtering. In terms of saving taxpayer money we have to be careful of the kinds of decisions we make. And I think this is a bad decision."

In 1998, a U.S. District Court judge struck down, on freedom of speech grounds, the local library policy of requiring the use of Internet filters aimed at blocking content deemed harmful to minors. The trustees' effort to limit Internet activity was pushed by Dick Black, who used his library board seat as a launching point for his bid for a seat in the House of Delegates.

Delgaudio said purchasing R-rated DVDs is in fact "undermining" a service the free market is providing. "Not one penny for an unnecessary service," Delgaudio said. "I'm only referring to DVDs here, they are a form of technology that has been established as entertainment. We might as well get into selling cars next. We have plenty of those around, too."

Coughlin, who was part of the citizen group that sued the library board over the Internet filter policy, doesn't buy into Delgaudio's logic. "We have book stores. You can buy Internet services," Coughlin said. "What's the difference? We provide all types of media. You can buy any type of media. Why single out one type of media? To be perfectly honest, Supervisor Delgaudio is completely anti-tax and anti-government. This started out as a culture wars issue. Now they tried to turn it around to a taxpayer or financial issue. It's the same right-wing extremists in Loudoun County trying to do these kinds of things for years now."

Craig Chapman, who was appointed to the board of trustees by Waters (R-Broad Run), voiced concern over what he deemed the "fluidity" of the rating system. "A lot of material on DVDs, ten years ago an R rating would be considered mild compared to what it is today," he said. "Considering we are a public organization, there is some responsibility to be taken as to who can have access to what type of material."

Waters said her motivations were "purely financial," in asking the board of trustees to spend its money on anything but R-rated DVDs. She attempted to stop libraries from buying DVDs two years ago, but failed.

"I think first and foremost the library should be about spending tax dollars on books and other educational pro-

grams," Waters said. "The limited amount of dollars should be spent on educational materials."

When asked about specific titles, like Shakespeare adaptations or *The Passion of the Christ* for instance, Waters demurred. "I don't want to get into titles," she said. "It's not about one being better than the other. It's about what should be available in the library. [People] can go to Blockbuster or Netflix," to rent an R-rated DVD. Reported in: *Leesburg Today*, July 7.

Sequim, Washington

The Spoken Word Revolution: Slam, Hip Hop & the Poetry of a New Generation will stay in the Sequim High School library because its poetry opens up the wider world. That was the Sequim School District Board of Directors' decision in a special meeting July 16. They responded to a complaint about *Revolution* from parent Tim Richards, who said the book's inclusion in the library showed him the district needs clearer boundaries when it comes to obscene content.

Richards said he read *Revolution* after his seventeen-year-old son checked it out while conducting research for a literature project. The book contains profanity and references to sex, drugs, and mistreatment of women, Richards said, that are inappropriate for young teens. He asked the school board to consider instituting a policy in which librarians would send home postcards listing which library books students check out.

"This just keeps parents abreast of what their kids are reading," Richards said.

Sequim High's social studies department chairman, Michael Lippert, called that a fine idea. But high school students aren't always going to comply, he said, and librarians are overloaded with work already. "Overall, this book is a very redeeming book," Lippert added. And if every book with something offensive between its covers is taken out of the library, "30 to 40 percent of the books could disappear from the shelves."

Sequim Middle School librarian Jo Chinn pleaded with the board to keep *Revolution* available. Students need a variety of materials to read, she said, so they can vicariously explore communities outside their own. Chinn's daughter, who is African American, needs books such as *Revolution* to reveal the literature composed by people of color, she added. Reported in: *Peninsula Daily News*, July 18.

university

Madison, Wisconsin

The University of Wisconsin at Madison—under political pressure to fire an instructor who argues that the United States plotted the 9/11 attacks—has cleared the way for him to teach this fall. Patrick Farrell, Wisconsin's provost, issued a statement July 10 in which he strongly defended the right of Kevin Barrett to teach at the university, whatever his controversial views. "We cannot allow political pressure from critics of unpopular ideas to inhibit the free exchange of ideas," Farrell said. "That classroom interaction is central to this university's mission and to the expansion of knowledge. Silencing that exchange now would only open the door to more onerous and sweeping restrictions."

While Barrett is scheduled to teach only one course this fall—and as a part-timer—his presence at Madison infuriated conservative politicians in the state and many others since he went on a radio show in June to share his views about 9/11. After Barrett was quoted as saying that he would share his views in the course, "Islam: Religion and Culture," Farrell announced that he would conduct a review of Barrett's past performance at the university and his plans for the course. Barrett earned his Ph.D. from Madison in 2004.

In his review, Farrell reviewed Barrett's past record at Madison as well as the syllabus and reading list for the course he was hired to teach in the fall. He said that his review convinced him that there was no reason to prevent Barrett from teaching.

"There is no question that Mr. Barrett holds personal opinions that many people find unconventional," Farrell said. "These views are expected to take a small, but significant, role in the class. To the extent that his views are discussed, Mr. Barrett has assured me that students will be free—and encouraged—to challenge his viewpoint."

Many of the political leaders who have called for Barrett to be fired have suggested that he would somehow dupe Madison students, but Farrell rejected that idea. "Our students are not blank slates. They are capable of exercising good judgment, critical analysis and speaking their minds," Farrell said. "Instructors do not hand over knowledge wrapped up in neat packages. Knowledge grows from challenging ideas in a setting that encourages dialogue and disagreement. That's what builds the kind of sophisticated, critical thinking we expect from our graduates."

Barrett said he was pleased with the outcome. He said that letters on his behalf swayed Wisconsin administrators. In a note to supporters, Barrett said, "Many of you argued that people who question the official story of 9/11 are not crazy, but patriotic Americans doing their duty as informed citizens. Others argued that university instructors should not be fired for their political opinions. You won both arguments."

He also challenged the many critics of his views on September 11—including many who defend his right to academic freedom, but say his theories have no validity—to debate him. Barrett's views and writings can be found on the Web site of the Muslim-Christian-Jewish Alliance for 9/11 Truth, a group he founded.

Many of those who had been calling for Barrett's dismissal said that they were dismayed by the decision to keep him on. The vast majority of academics who have spoken out about the case have dismissed his theories as absurd, but most of those people have also suggested that the university would endanger academic freedom by firing an instructor for his political views. Much of the political criticism of Barrett—from lawmakers and on talk radio—has included calls for his immediate dismissal.

"If the overpaid administrators at UW-Madison feel justified in defending Kevin Barrett, then their decision will make it that much easier for me to fight for greater administrative cuts for the UW in the next budget. They have academic freedom, but the taxpayers and the legislature have the power of the purse string," said State Rep. Steve Nass, a Republican. He added that the case shows that "the leadership of UW-Madison fears the wacky left."

Barrett is also an adjunct at Edgewood College, a private institution in Madison, where he will be teaching a course this fall called "Human Issues: The Challenge of Islam." A spokesman for Edgewood said that he didn't know of any problems when Barrett taught the course previously, and that there had not been concerns at Edgewood about the course this year. Reported in: insidehighered.com, July 12.

foreign

Singapore

Singapore's National Internet Advisory Committee has abandoned an idea to make it compulsory for bloggers to register with the media watchdog. The popularity of blogs or online journals prompted the committee to consider requiring their authors to register with Singapore's Media Development Authority (MDA). Political and religious parties, Internet service providers, and online newspapers already come under this rule.

The twenty-seven-member committee, which is made up of government officials and industry leaders, concluded that blogs were simply "old wine in new wine bottles"—no different from Web sites or Web forums where people can post what they do or think. The committee said bloggers who put up material against "public and society interest" could be dealt with under existing laws.

Another area that came up for debate by the committee was whether mass e-mail should be regulated under broadcasting laws. The committee decided against it for now because e-mail is an "indispensable tool of communication for business and society"—even if mass e-mail can "technically" be considered broadcasting. Reported in: Asia-Pacific Broadcasting Union Web site, July 10. □

(from the bench . . . from page 240)

The DGA was able to persuade the Hollywood studios to join the action as defendants and via a counterclaim.

Matsch, in a sixteen-page ruling, found that CleanFlicks, Family Flix, CleanFilms, and Play It Clean Video were violating the studios' rights as copyright holders "to control the reproduction and distribution of the protected work in their original form."

"It is particularly gratifying that the court recognized that this conduct is not permitted under copyright laws," Apted said in a statement. "Audiences can now be assured that the films they buy or rent are the vision of the filmmakers who made them and not the arbitrary choice of a third-party editor." Apted also said that the case was of particular import to directors as their films are the basis of their reputation.

"No matter how many disclaimers are put on the film, it still carries the director's name," he added. "So we have great passion about protecting our work, which is our signature and brand identification, against unauthorized editing."

The companies had claimed that the doctrine of "fair use" gave them the right to edit the films, and CleanFlicks said it would appeal the ruling. Matsch also ordered the businesses to turn over their inventories to the studios within five days.

CleanFlicks and Family Flix create sanitized versions of movies, while CleanFilms and Play It Clean Video are retailers of the altered pics.

Matsch's ruling impacts only the companies selling altered versions of the films and doesn't affect companies selling software that skips and mutes parts of movies on DVD. In a ruling last year, Matsch dismissed all claims in a lawsuit filed by the DGA and Hollywood studios against ClearPlay over its software that filters adult language and content from DVDs.

That decision came four months after President Bush signed the Family Entertainment Copyright Act, a package of antipiracy measures. Over Hollywood's objections, that legislation included the Family Movie Act language that established the legality of using technology to skip over a movie's video or audio content. Reported in: *Variety*, July 9. □

SUPPORT THE FREEDOM TO READ

(is it legal . . . from page 254)

Indeed, the cooperative's executives voiced early concerns about legal and corporate liability, officials said, and the Treasury Department's Office of Foreign Asset Control began issuing broad subpoenas for the cooperative's records related to terrorism. One official said the subpoenas were intended to give Swift some legal protection.

Underlying the government's legal analysis was the International Emergency Economic Powers Act, which Bush invoked after the 9/11 attacks. The law gives the president what legal experts say is broad authority to "investigate, regulate, or prohibit'" foreign transactions in responding to "an unusual and extraordinary threat."

But L. Richard Fischer, a Washington lawyer who wrote a book on banking privacy and is regarded as a leading expert in the field, said he was troubled that the Treasury Department would use broad subpoenas to demand large volumes of financial records for analysis. Such a program, he said, appears to do an end run around bank-privacy laws that generally require the government to show that the records of a particular person or group are relevant to an investigation.

"There has to be some due process," Fischer said. "At an absolute minimum, it strikes me as inappropriate."

Several former officials said they had lingering concerns about the legal underpinnings of the Swift operation. The program "arguably complies with the letter of the law, if not the spirit," one official said. Another official said: "This was creative stuff. Nothing was clear cut, because we had never gone after information this way before." Reported in: *New York Times*, June 23.

Trenton, New Jersey

The New Jersey attorney general has issued subpoenas to five telephone companies to determine whether any of them violated the state's consumer protection laws by providing records to the National Security Agency. Experts say it is the first legal move by a state to question the agency's program to compile calling records to track terrorist activities.

On June 14, the United States filed a lawsuit to block the subpoenas, setting up a legal showdown pitting the state's authority to protect consumers' rights against the federal government's national security powers.

"People in New Jersey and people everywhere have privacy rights," the state's attorney general, Zulima V. Farber, said. "What we were trying to determine was whether the phone companies in New Jersey had violated any law or any contractual obligations with their consumers by supplying information to some government entity, simply by request, and not by any court order or search warrant."

This latest confrontation over the invocation of national security began in May, when Farber issued the subpoenas to the companies—AT&T, Verizon, Qwest, Sprint Nextel, and Cingular Wireless—to determine whether they had turned over the phone records to the federal government without a court order, in possible violation of state laws.

But when the Justice Department filed suit in United States District Court to block those subpoenas it asserted that the state was straying into a federal matter, and that compliance with the subpoenas would imperil national security.

As a matter of national security policy, the dispute represents the latest twist in the controversy over the boundaries of domestic spying and personal privacy. But as a matter of government practice and legal precedent, the dispute is significant because it transforms what had primarily been a fight between the federal government and civil liberties groups into a far knottier one pitting federal authorities against state ones.

Clifford Fishman, a professor at Catholic University Law School who is an expert on electronic-surveillance law, also said the actions by both state and federal government were laden with political overtones. Fishman said New Jersey's subpoenas—issued by a Democratic administration—appeared to be "a political move to try to embarrass the Bush administration as well as the phone companies." But he added that "the Bush administration is responding with a howitzer instead of a sniper."

The professor, who noted that he had not seen the government's suit, said each party had alternatives to what he saw as a significant development over the disputed reach of the National Security Agency. He said the federal government need not have sued New Jersey to make its argument against the subpoenas, and he said the state could have allowed numerous private parties to pursue litigation against the phone companies, rather than getting involved.

In the lawsuit, the federal government invokes the state-secrets privilege, in which the government asserts that any discussion of a given lawsuit's claims would threaten national security.

"Compliance with the subpoenas issued by those officers would first place the carriers in a position of having to confirm or deny the existence of information that cannot be confirmed or denied without causing exceptionally grave harm to national security," Assistant United States Attorney Irene Dowdy claimed in the government's complaint. "And if particular carriers are indeed supplying foreign intelligence information to the federal government, compliance with the subpoenas would require disclosure of the details of that activity."

But Farber said that it was incumbent upon her to insure that the phone companies were not violating state law if they had turned in any phone records to the NSA. The *New York Times* first reported in December that President Bush had authorized the security agency to conduct eavesdropping without warrants. In May, *USA Today* reported that the NSA had created a large database of phone calls made by customers of several phone companies.

A few days after the *USA Today* article was published, Farber issued subpoenas to phone companies that operate in New Jersey. Yet few people outside of state government and the phone companies knew about them. Farber had originally demanded responses by May 30. She said that telephone company representatives, unable to persuade her to withdraw the subpoenas, had asked for an extension. One day before that extended deadline, the federal government filed its lawsuit.

The question of whether phone companies have turned over customer records to the spy agency already has spawned a handful of lawsuits. Some companies have denied surrendering the records; others denied wrongdoing or declined to comment.

Selim Bingol, a spokesman for AT&T, said the lawsuit filed by the federal government to block New Jersey's subpoenas showed that the phone companies should not be the ones that have to address these policy issues.

The American Civil Liberties Union has filed complaints in twenty-two states demanding that attorneys general and utility regulators officials investigate whether consumer protection laws have been violated. Officials in a few states in addition to New Jersey. including Vermont, Maine and Washington, have promised to investigate.

"All we're really trying to do is to make sure that the phone companies have followed the law," said David J. O'Brien, Vermont's commissioner of the Department of Public Service.

But none had gone as far as New Jersey, according to Barry Steinhardt, director of the ACLU's Technology and Liberty Project.

According to some critics, one potential weakness of the government's state-secrets claim is that Farber—as well as Gov. Jon S. Corzine and Richard L. Cañas, the state director of homeland security—has top federal security clearance, and might well not divulge any sensitive national security information she received as a result of the subpoenas.

"Our state officials are cleared for security purposes all the time," said Bruce Afran, a lawyer in Princeton, N.J., who, with his partner, Carl Mayer, filed a federal suit in Manhattan last month against Verizon. Reported in: *New York Times*, June 16. □

READ
BANNED
BOOKS

(nothing but the facts. . . from page 221)

two-year stint as legislative counsel for the church's Office of Church and Society in Washington. From 1984 to 1991, he was legislative counsel in the ACLU Washington Office. In 1995, Barry co-authored, *The Right to Religious Liberty: The Basic ACLU Guide to Religious Rights*. He writes frequently on religious liberty issues and has had essays published in a wide variety of outlets including *USA Today*, the *Los Angeles Times*, the *Wall Street Journal* and *The Nation*. Barry received his theology degree from Boston University's School of Theology in 1973. He has been a member of the Washington, D.C., bar since he earned his law degree from Georgetown University Law Center in 1978.

Michael Ruse is the Lucyle T. Werkmeister Professor of Philosophy at Florida State University in Tallahassee. He is one of the world's leading authorities on the history and philosophy of Darwinian evolutionary theory. Michael taught philosophy and zoology at the University of Guelph, Ontario, Canada, for thirty-five years. In 1986, he was elected a Fellow of both the Royal Society of Canada and the American Association for the Advancement of Science. Michael received an honorary doctorate from the University of Bergen, Norway, in 1990 and McMaster University, Ontario, Canada, in 2003. Founder and editor of the *Journal of Biology and Philosophy*, Michael is the author of many articles on the topics of evolution and religion including "The Evolution/Creation Struggle," "The Evolution Wars: A Guide to the Debates," "Mystery of Mysteries: Is Evolution A Social Construction," and "Darwin and Design: Does Evolution Have a Purpose?". Michael has been a Herbert Spencer Lecturer at Oxford University and a Gifford Lecturer at Glasgow University. He also holds Guggenheim and Isaac Welton-Gillin Fellowships. Michael earned his B.A. in Philosophy and Mathematics and his Ph.D. in Philosophy from the University of Bristol, UK, and a Master of Arts in Philosophy from McMaster University in Ontario.

Please join me now in welcoming Barry Lynn.

Rev. Barry Lynn: Well, thank you very much for having me here. It's not only that I like New Orleans, but it also means that by being here I don't have to be in Washington, D.C., which these days really does have the feeling and the appearance sometimes of an alternate universe in some very, very bad science fiction novel—one you may not even want on your shelves. For example, most of the scientific community believes and understands that fossil fuel use is creating a crisis of global and climate change, yet later this week, the Senate is scheduled to debate an amendment to the First Amendment to the Constitution that would permit the prohibition of flag burning—as if the one flag burned

every two years in protest is the general reason we have global warming.

That's the priority, that's what it's all about. The only way you can come close to experiencing what those of us in Washington experience everyday is to go back to your hotel room, get out the remote for the cable television and switch between C-Span's coverage of the House of Representatives and whatever is playing on the Cartoon Network. If you can tell the difference, you're a keener observer of nature than I am.

Judith Krug could not be with us, but Judith Krug is a longtime friend, and when she asks you if you want to speak about anything, of course, your instant reaction must be yes, yes indeed. I said, "Of course, I'd like to talk about why intelligent design is really not an academic freedom issue." There are some relatively easy answers to that question, but it turns out that there are a number of more difficult questions wrapped up in that big picture question. I pondered these for weeks and, in particular, over the last ten days because I've been traveling coast-to-coast literally from New York to San Francisco to the Midwest to here. The key to this whole discussion wherever it comes u—whether it's on radio or television or in your libraries or in your public schools or on street corners—is all about what is evolution? Evolution is descent with modification. In other words, the idea that we have, all of us, common ancestors starting with some initial ancestor common to all life in its great diversity on the planet Earth that's all it is. Evolution and thinking about it and discussing it and teaching about it is not about a lot of other things. It's not about how the universe began. It's not about whether there is purpose in the universe. It's not about who or what if anybody or anything may have been responsible for life as we have it. All of those are vitally important questions. They certainly are to me theologically and philosophically, but they are not scientific questions and they are not at the root of this debate over evolution.

So, I'd like to start by telling you, briefly, what the history of this battle in the courts has been like and the way attacks on evolution have fared in the United States legal system. Also, I want to make a few proposals later on about how we should deal with academic freedom when it's heard from teachers, librarians and members of the public, and also discuss some conclusions about what you might do with books on topics like Creationism and Intelligent Design if confronted with the question of where to put them in your library. I don't know that Michael will agree with everything that I say. We haven't checked this out in advance.

The evolution debate, of course, started in this country before there was a Scopes trial. It started as soon as there was any discussion by Charles Darwin or any thinking about this topic. Darwin delayed publication of *The Origin of Species*, the book that got all of this rolling, for decades because of the fear it would cause in the community and, in fact, even in his own family. In the United States, the courtroom volley began in earnest at the Scopes trial when John Scopes was convicted of the crime of teaching human evolution in the Dayton, Tennessee, public school system. His conviction, as many of you know, was later thrown out not on any grand constitutional grounds but on a rather minor technical point. In other words, the Scopes trial was not exactly as convincing or as clear as it was depicted in the famous book and then movie, *Inherit the Wind.*

Ever since that one success in convicting Mr. Scopes for teaching the wrong thing about human evolution, the history of attacks on evolution in the courts have gone decidedly downhill for those who are promoting it. The idea of teaching any kind of alternative to evolution has not been faring very well in the courts since the 1960s. In 1968, the United States Supreme Court took a look at a statute from the state of Arkansas that literally paralleled the one that Scopes had been convicted under in Tennessee but made it a crime to teach evolution. The Supreme Court said a bar to teaching evolution was unconstitutional because effectively it offended the specific religious beliefs of most of the legislators in the state; that's why they put the ban on teaching evolution in the schools and that motive of wanting to protect a religious viewpoint and ban the alternative or what they claim to be an alternative viewpoint, evolution, simply violated the Constitution and the First Amendments guarantee that government would not be in the business of promoting or protecting particular religions.

By 1987, a full nineteen years later, this state [Louisiana] decided to try a different method of getting teaching about creationism, an alternative to evolution, into the public schools by passing a [so-called] balanced treatment law. The idea here was that teachers in the state were required to teach both evolution and something called creation science, the claim that through the Bible story of creation, there was also parallel scientific evidence to support it. That also got to the United States Supreme Court. The majority, not everybody, but the majority of the court, said that creation science again was actually a religious philosophy based on the central idea of God's active intervention in the biological processes of life, and that very religious basis and formulation made its teaching, even alongside evolution, a violation of the Constitution's First Amendment.

They said that, of course, there could be claims made that evolution is imperfect. There can be legitimate scientific debate about it. This, however, they said was not a part of that legitimate debate and to the extent that anybody developed genuine scientific alternatives to evolution, you didn't need special laws in the state of Louisiana to teach it. It was assumed to be part of the normal teaching of science where one looks at all of the scientific evidence. After that 1987 case, of course, as in everything in the law and this is a good thing for those of us who are lawyers at least part of the time, the issue doesn't go away. The principal

approach in the 1990s were so-called disclaimers, which were to be read to the students before biology classes or, in a few cases, literally pasted in the biology textbooks. These disclaimers were really designed to defuse the controversy by making it safer to teach about evolution. One of these disclaimers said, "Evolution should be presented to inform students of the scientific concept and is not intended to influence or dissuade the biblical version of creation or any other concept." Well, even that disclaimer, the Circuit Court of Federal Appeals for this area said, was unconstitutional primarily because it highlighted the Genesis account as the sole alternative theory that was highlighted by the disclaimer itself. The Supreme Court decided not to hear that case. So the issue of disclaimers has never firmly and unequivocally been resolved by the United States Supreme Court and that's possibly of some importance as we look to the future of the law in this arena.

Just as an aside here, there might be some of you thinking it's a little unusual for state legislators who may have very little in the way of science background to even begin to write add-ons to science books or add-ons to the promotion of what should be told in a biological classroom. Of course, you'd be right about that because most of the people who generally are serving in the state legislature get there because they're really good at kissing babies not because they know anything about science.

As another aside though, legislatures these days do tend to wander into all kinds of arenas that would not immediately come to mind as their area of expertise. I must say the whole state legislature here two weeks ago decided not just to keep rewriting science but actually rewrote the Ten Commandments so they could find a new common version that could be placed in every public school classroom in the state. Yes, very unusual. I don't have complete inside information but I do understand that neither God, nor even Moses, are planning to re-carve on the basis of what the legislature did. They go out and they do these things, and these disclaimers in regard to this one scientific dispute are very much in the same category.

Now, disclaimers became what Ed Sullivan, those of us who remember him, might have called "the really big show" became in Dover, Pennsylvania, just very recently. You probably read a lot about this in your newspapers. We filed a lawsuit in 2004 because of the actions of the Dover, Pennsylvania, School District in Central Pennsylvania. The board had passed a resolution that ninth grade biology teachers read a statement prior to discussing evolution; the statement in part said, "Evolution is not a fact, merely a theory, one with gaps and further, that an alternative scientific 'explanation' could be studied" by reading a book called *Of Pandas and People*. *Of Pandas and People* happens to be the primary textbook on the intelligent design movement. It could be read in the school library because sixty copies of that book had just been donated to the library by the local fundamentalist church.

Well, a number of parents asked Americans United and the Pennsylvania affiliate of the American Civil Liberties Union to represent them in a challenge to the constitutionality of that disclaimer and that approach to biology with the pro bono assistance of a wonderful law firm in Harrisburg called Pepper Hamilton. We put on a trial challenging the assertion that this new version of creationism, intelligent design, was not science to begin with and also trying to demonstrate that it, too, was clearly based on religious premises and ideas.

Intelligent design is the argument that the sheer complexity of the biological world would require a purposeful designer who has somehow arranged it in this way. It argues, in essence, that natural selection, random selection, is inconceivably sufficient to create the diversity of life that we have on this Earth. Some of you may be familiar with this. It doesn't sound so new because if you studied philosophy, a number of thinkers have used the same argument to prove the existence of God.

In one sense, this Dover case maybe gave us too easy a record to deal with, particularly on a score of proving this was all about religion and not about science. We had school board members on the record and literally on videotape asserting that their interests in intelligent design (ID) was to bring ID attention to religion. One member of the school board who voted for this said, "Two thousand years ago, a man died on a cross. Isn't it time somebody stood up for him?" The implication was if you stand up for this man, you will be voting for intelligent design; otherwise you're voting against God. That's what he meant and that's what he said in what we lawyers like to call a declaration against interest because when played back at the trial, it was extremely embarrassing.

In a real sense, the comments of the school board members—and there were other comments just as bold as that one—but part of the argument that we were making is that the very intellectual leaders of this intelligent design movement, always at least in their unguarded moments, talk about intelligent design in ways that sound awfully religious. For example, William Dembski is a mathematician, one of the most frequently cited experts in the field of intelligent design. He wrote, "Intelligent design is just the low dose theology of John's Gospel restated in the idiom of information theory." That sounds kind of religious to me. Pretty clear and convincing proof, in my opinion, of evidence that this is about religion.

The University of California Berkeley law professor, Philip Johnson, who gained credibility for this intelligent design notion back in the late 1980s and 1990s once said, "Intelligent design means that God is objectively real as creator and recorded in the biological evidence." There's really no way in my view to get around those judgments, those statements in the legal debate that continues about what intelligent design really is because folks who promote it tell us what they think it means.

During the twelve months of preparation and trial in the Dover case and even before the decision was announced, a very curious thing happened in Dover. A school board election was held last November. The voters of this pretty conservative Central Pennsylvania town actually voted out of office every one of the original proponents of intelligent design in an open election. The public had apparently learned a number of things in the twelve months or so that had proceeded this including that the city did not like to be a national laughingstock, at least if that's measured by the number of times they were mentioned on Jon Stewart's *The Daily Show.* They decided, "Let's cool it. Let's get rid of these people." The trial was too late. The evidence had all been presented. The court was considering what would happen. So, they really couldn't do anything about that.

The day following that election though, we did have some interesting comments from one of the people with whom we disagree about a lot of things, the Reverend Pat Robertson. Pat Robertson went on the *700 Club* that day and said, "I would like to say to the good people of Dover, if there is a disaster in your area, don't turn to God. Just remember, you just voted God out of your city." In a later clarification by the Brother Robertson, who will do this a lot, he went back and said he did not mean that there would necessarily be a disaster in Dover, he just wanted to remind people that if there was, call Charles Darwin.

Although Brother Robertson's views are viewed as important by about 16 percent of Americans who say they agree with him almost all the time about everything, his was not to be the final word on all of this. The final word from Dover came on December 20, 2005. Federal Judge John E. Jones, III, ruled that this disclaimer indeed was an unconstitutional endorsement of religion. He wrote that the decision to promote intelligent design by the previous city council was an example "breathtaking in attitude", which is not a phrase I learned in law school. To reach such a conclusion Judge Jones had to listen to a lot of debate from real and imagined experts about a lot of the key components of that disclaimer and that was how he was able to determine that the disclaimer was not scientific, but highly misleading and based fundamentally upon religion.

What did he have to look at? Well, he had to look at the disclaimer and its very words. For example, evolution is only a theory. Yes it is, but a scientific theory is completely different from other things that might be called theories. To be more specific, if you hear someone say on the Rush Limbaugh Show or alternatively on Al Franken's show who is likely to win in the 2006 elections that would be speculation. It might be informed speculation but that's all it is. It is not fact. Scientific theories are based on something different and that is a remarkable array of physical evidence and testable hypotheses all of which add credibility to a proposed explanation of something that's happening in the natural world. In this case, how this magnificent diversity of species came to exist on the planet Earth. It's not a guess. It's not a hunch and just like the ampere theory of electromagnetism or Newton's theory of gravity, these have been substantially improved and altered since the time they were first articulated.

In the same way, the theory of evolution has come a long way since it was first articulated by Charles Darwin who has been dead for how many years now? A funny thing happened though on the way from Darwin's death to the current time, and that is that we have done a lot of scientific study, a lot of looking at this basic idea of descent with modification and we find that the notion of species having common ancestors has a lot of growing scientific support.

Indeed, I would say all of the scientific discoveries since that time have added weight to the core model he presented then. That evidence includes the work of paleontologists, some of fossil records, of geologists and the age of the Earth and of geneticists, ranging from the early days of Gregor Mendel and his pea plant, all the way to the biologists who are running the human genome project today. The evidence running counter to Darwin's essential model is kind of in the realm of Snipe Punson Fog Soup, things that really don't exist, for which there is no evidence.

That, of course, doesn't suggest that we know everything we need to know about evolution. Of course, we don't. We're discovering new things all the time. Part of the very basis of the nature of science is to investigate the unknown, including the unknown in specific disciplines, so that we can get a better idea and a more complete idea of how things function the way they do.

Intelligent design turns out not to be so much an alternative theory built up to compete with evolution as just nitpicking at some of the ideas of evolution. For example, again go back to the disclaimer. It says, "Evolution has gaps" and that's true. There are gaps in the fossil record. We don't have a fossil for every conceivable entity that ever existed on the face of the Earth. However, on the more important side, systematically we fill in those gaps, scientists fill in those gaps year after year. Just two months ago, you may have seen on the front page of your newspapers the story of the discovery of the fossil of a creature, of which its discoverer, Neil Shuman at the University of Chicago said, "There is a distinction between fish and land living animals." In the vernacular, it's a fish in the process of adapting to being a land animal and it's actually pretty cute if you go for the piranha and crocodile.

Discoveries of all kinds of intermediate fossils, and they are sometimes called intermediate fossils, are published in a prestigious journal. As for intelligent design, it has no peer reviewed articles at all published in any scientific magazines. For a while, it had what you would call a scientific journal; however, it had so few submissions that the journal went out of business. Mr. Shuman from the University of Chicago, I suspect, will be going all over the country this summer explaining his find and discussing the nuances and details with his colleagues. Intelligent design

supporters do not put their notions and ideas to the test of academic rigor. They rarely even attend readings in which that would be possible.

Dover didn't end the debate. Just a few weeks after the Dover decision, our Americans United lawyers had to file what's called a temporary restraining order to try to stop the class called "Philosophy of Design" in a high school in La Beck, California. Although this class was labeled philosophy, the teacher's own class description and syllabus for the course noted among other things that she was going to use Bible-based criticism of the age of the Earth to demonstrate that the Earth may be thousands not billions of years old. If that were true, if the Earth were only thousands of years old, this would mean that humans and dinosaurs lived at the same time. She could have used as videos in her course Flintstones cartoons.

By the way, Lewis Black, the comedian, stole that joke from me. I forget who I stole it from.

The school board dumped the course. The school board, under pressure from people in the community decided not to go through another trial, not to start anymore fuss with the legal system. Just change the decision. Get rid of the course and substitute an ethics course, which is what they did. They also signed an agreement, filed it with the judge that if we would drop the case they would agree never to teach this kind of intelligent design in any form in science or philosophy. You know in theory I think you could teach intelligent design in a philosophy course or a comparative religion course. You might be able to permit some discussion of this question of design but I must tell you even though they are very smart people on the other side of this debate, I think in a public school system where we are not teaching geography, we are frequently not teaching any social studies until high school; we are starting to cutback on math and art and physical education—I'm just not sure that teaching philosophy courses are the best use of resources for our children

It would be nice if the case in Dover made everything go away and it will never come back but, of course, it will. Variations on it will come back and some of these variations are going to sound very seductive to people like us. Why? Because we care about intellectual freedom. We care about speech. We care about diversity of opinion and we're going to start to see again what we started to see in the 1990s and that is individual teachers saying listen I have an academic freedom right personally to teach about these issues in public school, to teach alternatives to evolution because I believe them.

There are four cases that I'm aware of back in the 1990s and running through about 2001 where teachers made that claim and, in fact, lost in every case because what academic freedom really is, is not something that is derived from the Constitution. What academic freedom is is the notion that governments should not interpose their views on academics who disagree with government policies or government views. The kind of things, unfortunately, this administration is sadly doing in many, many contexts.

This was the problem that was dealt with back in 1915 when the American Association of University Professors decided to create a statement on academic freedom. The association was concerned that academic disciplines and the professions would end up not being able to maintain the freedom to set their own standards and to decide their own methodologies. Then, as now, I think most of us would agree with that definition of academic freedom. Certainly, we wouldn't want Congress to set the nature of peer review for medical journals. They would know nothing about it. We wouldn't want a local legislature to define the permissible scope of research into human psychology. That would not be a government function. And we certainly wouldn't want to impose on librarians some kind of national acquisition policy based on the whim of the United States Senate—that would be wrong.

The most governments can do, and this is generally done at the state school board level, is to give a general sense of what is in the curriculum after consultation with experts in those fields, whether it's science or history, or the other groups that look at curriculum development. There's absolutely no serious plan that the teacher can make. They can ignore the conventional standards of science, for example, in pursuit of their own idiosyncratic views about any topic including evolution.

Teachers in those four school districts I mentioned specifically tried to make that claim. They were all rebuffed by courts. One court noted in particular the established curriculum and a teacher's responsibility as a public school teacher to teach evolution in the manner prescribed by the curriculum overrides his First Amendment rights as a private citizen. That's the way all the courts looked at it. It was easier for these courts because they said to permit someone to come in and interject his or her view about what's wrong with evolution would be a de facto promotion of religion and that's a particular no-no for public school teachers. So, therefore, there's nothing to worry about; the courts have decided.

Not exactly. No Supreme Court decision exists on the question of academic freedom in a science class. It's conceivable that with the addition of John Roberts and Sam Alito, two very conservative jurists, that things could change. A case could come up. We could be fighting that again. I don't want you to think it's resolved. I just want you to know where all of the cases so far have gone on this matter.

Another thing you might do, as has been suggested by some proponents of intelligent design, is teach the controversy. Look, we know there's a controversy. That's why it gets in the newspaper. That's why it's on television. That's

why there are specials about it and three feature movies are in production about the Dover case itself. So, we know it's contentious. Maybe we should teach the controversy.

Well, here's why I'm against teaching the controversy. Two recent studies by biology teachers in high schools around the country both determined that approximately half of the biology teachers, not withstanding any laws that tell them what to do, don't teach any information about evolution or teach very little information. Frankly, they don't want to stir up the pot and get into a controversial area. That's shocking. I don't think we should donate classroom time to this completely phony effort to dissuade people from accepting the clear evidence of evolution. So, I don't think it's worth doing. If you want to teach a controversy in science and talk about the political and cultural ramifications of it, frankly there is more debate about global warming and climate change. More respectable scientists who look at different computer models and reach different conclusions look at physical evidence. At least there is more of a debate there than there is in the area of evolution and so for intelligent design. So, I would not want to teach that either. I don't think it's appropriate to teach this in the public schools either.

Sadly, one of the things you learn about intelligent design, the more you study it and the more you look at it is that it does damage not just to the idea of science but to the idea of religion as well. When you conflate the two, I think you do a disservice to religion and its serious study, and science and its serious study. I guess in the most simple terms, biologists are simply describing the how of the natural process and asking the question what is the evidence that we can find that this is real and accurate. They should not ask the question of why such a process exists that causes them to ruminate on those very important philosophical and religious questions but that is not their area of expertise and if you keep those questions and the methodologies that address them separate then you start to find out why it's easy for relatively conservative theologians to accept the evidence of evolution, even the way Pope John Paul II frequently told Catholics there is no apparent conflict between the mounting evidence for evolution and a commitment to support the idea that God has a purpose in the world and that as religious people they should accept that evidence.

In science, we need to know what we see and hear and smell and feel, the senses of the mechanism of investigation. The alternative in religion, of course, is we can be open to other forms of knowledge including revelation, and other non-scientific ways of acquiring information. To keep those two universes separate is again, good for religion, good for science.

Now, let me finish by getting into the really controversial stuff that directly relates to libraries. The Library Bill of Rights, developed by the American Library Association, says, "Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval." Indeed, in the ALA's interpretation of this principle, it specifically cites examples of censorship by not purchasing conservative religious materials. In general, those same standards that the ALA proposed are appropriate in their view for all libraries, school libraries and public libraries. On the other hand, the ALA council, itself, in 2005 made some recognition that school libraries are often following local school based curriculum decisions on collection development, procedures for the review of resources about which concerns have been raised. They recognize that there is a slightly different position and I would like to suggest that materials related to intelligent design or so-called creation science are not appropriate to be found in a public high school library and here's why.

It is the school board that sets the curriculum. We don't always agree with it. They set it in theory after consultation with experts. I don't think that there's anything in the average curriculum developed by any state or local school board that would make intelligent design a matter of interest to follow up and to support the core curriculum being taught in your public school. In a rare case, where there is a philosophy or comparative religion course that does discuss issues like design, I think you would be justified in buying additional volumes on the subject. Most schools, the vast percentage of schools do not have such a course and there are other things that you can think of where it may be perfectly appropriate to recognize the public controversy, but you wouldn't be placing in your high school library examples of hardcore pornography even though that's a debatable issue and young people see it on the news and see it discussed on cable television. You wouldn't discuss bomb making and have books on the subject in a library in a high school simply because it never comes up in the prescribed curriculum for that school.

I assume some of you disagree with that but I just wanted to mention that I think it is not appropriate to place materials like *Pandas and People* in school libraries. When it comes to public libraries, however, I think there is a different answer. I don't think it's a simple one though. The two primary sources of textbooks for intelligent design, one is called *Pandas and People*, which I mentioned, and the other is called *Icons of Evolution*. To my taste, they're not particularly well-written books, but to my taste, *The Da Vinci Code* wasn't a particularly well-written book. It sold forty million copies. So, what do I know.

That can't be the criteria. The public's interested in the topic of intelligent design and since one does not have school board curriculum issues around public libraries in downtown Minneapolis, those books I think should go into

the public library. The question I guess remains where do they go? The authors of the books say that they belong in the science section right next to *Modern Biology* books, right next to *The Origin of Species*, right next to dozens of other books on evolutionary science.

Now courts like the one in Dover, Pennsylvania, dealt a blow to intelligent design and said it's not science. They went exhaustively through why it wasn't science and concluded that intelligent design was religion. So, as a librarian should you listen to the authors who say well in spite of a few determinations by courts we want this in science that's why we wrote. Or, do you listen to one or two courts and say, "Well, one or two courts is better than no court. This must be religion. We'll put it in the religion section." I'd suggest that if you listen to the authors, you're going to find yourself in a lot of trouble because there will indeed be people who write astrology books who will claim that those too are scientific, and in fact, one of the witnesses at the trial in Dover, a representative supporting the school board's position actually said that in his definition of science, astrology was scientific just like intelligent design was scientific. So, if you listen simply to what they say, you can get yourself deeper and deeper and deeper into that pit. If you listen to judges, you have to deal with what will be consumer questions that is judges, why are they so smart? They are mainly politicians. Prosecutors. They are kissing babies, too, to get elected. Why should we take their views so seriously? I think you have to be prepared to deal with that question.

In some very casual comments I've had over the last day or so with ALA attendees, I would say that most of you would agree with my central idea that it's pretty firmly established that intelligent design is religion and you put it in the religion section. But I think you should do that knowing there is still some controversy. The religion section, I think, is under the Dewey Decimal system 213 Religion: Creation. Here comes somebody from the community though who says, wait a second this doesn't even belong in the religion section. This is so much junk. It's peddled as science and it isn't. It's not admitted to be religion. They say it's not religion and if they say it's not religion and you know it's junk science, then don't put it anywhere. Don't even buy it and in fact that is the position taken by some people who complain about the very existence of these books in any library.

I think fundamentally they're wrong because we all know that we have in libraries all kinds of propaganda that doesn't necessarily tell us the full story. I don't think you can say that intelligent design is a fraud or a hoax. There are books that you know are hoaxsters and controversial books. You have them in your library. I don't think you can dump it out on that basis. One person I mentioned this problem to has another interesting solution. If you don't want to go the religion route, you have a section that might, several sections actually of what might be called fringe science, materials for which scientific claims are made but for which the evidence is not apparently there academically to give it a stamp of approval. You appear to have classification 130 Paranormal Phenomenon. I'm quite serious about this. If intelligent design is about non-natural phenomenon, then maybe this is a place to put it because remember it's not science.

The development coordinator for the Baltimore County Public Library is quoted in an article in *Library Journal* just last month in an article called, "What's In A Name?" She talks about a patron who complained about the positioning of two creation books in the Dewey Decimal 500 in the science section. They did a staff assessment in Baltimore and decided to put one book in the Dewey 100's and the other in the 200's, a step the reporter referred to as a decision, "like King Solomon made" that's putting that article in Section 222 Old Testament History.

She said in the article and fundamentally it's why I trust librarians, "We librarians have to maintain accuracy and intellectual honesty and place books in their correct area." I trust that you're going to do that. I just hope you've worked through some of these issues. A final footnote on classification and then I'll let Michael tear this apart, the supporters of intelligent design say we cannot be really promoting religion because we don't say that the creator or designer is God. When you press them as to who or what the designer is if not God, the general response up until very recently has been, "perhaps outer space aliens." Consider Dewey Classification 999 Geography Extra Terrestrial World.

But lately Michael Bahi, a prominent advocate of intelligent design, has said it can also be time travelers who were the designers. Consider Dewey 135 Dreams and Mysteries or Dewey 387 Water Air Space Transportation. You know, like so much else in the world of intelligent design, such answers just end up begging the question, don't they? Who designed the aliens or the time travelers? So, I don't think it gets very far.

I'm just glad you're out there constantly pursuing knowledge and the effort to classify it and understand it and to make it readily available to all because, after all, there are so many truly unanswered questions. I want to thank you very much for having me here.

Michael Ruse: At lunch today I said, you know this is wonderful. Now, I've finally got you librarians sitting down talking to me rather than just yelling at me and telling me not to talk in the usual loud tones that I do. I said, "Tell me, are there in fact scientific studies, which show that librarians really are like the image that most of us have of librarians. That you're nice people. That you're rather quiet people, a little bit anal retentive and those sorts of things." "Oh no," I'm told proudly, "we're completely different. In fact, we're the biggest boozers on this weekend." I was

told that we could never have a conference in the same place twice because at night we do so much damage to the fabric of the place we have to keep moving on. They said, "We're the worst" when in fact you're not. Philosophers, in fact, are far worse than you but it was nice to know that you don't live up to the image that the Michael Ruses have of you.

Let me start by saying congratulations to you on being here in New Orleans. This was a major American city, which was dissipated last year. I think it's wonderful that you folks have come and are here and spending money and making whoopee. I think that this is something you should all be genuinely congratulated for doing.

Now, the trouble with following Barry, as somebody once said, "It's a little bit like following Bob Hope." The thing is I love to listen to what Barry's got to say because he's so interesting and he has good points and he's got a good sense of humor and all of these things. I hate to listen to what Barry has got to say if I've got to follow him because whatever I'm going to do is bound to be anticlimactic. So, what I want to do this afternoon is throw out a couple of points speaking as a philosopher, as a philosopher and an historian of science. Then, I want to circle around very quickly at the end and raise or bring back some of the issues that Barry did raise because as he rightly suspected, I'm not sure I want to agree with him completely on all of these.

Understand this is a family problem. We're on the same side completely and utterly. That's not the issue. The question is what does that mean to us as we try to think things through. So, the question I ask is what is wrong with intelligent design? Barry's right, of course. It is just religion, Christian religion, tarted up to look like science, to get around the U.S. Constitution.

I mean there's no question abut that. That really is the case. I think there is so much evidence about that. *Creationism's Trojan Horse* I think is the book by Paul Grose and Barbara Forrest where they just pin these people down and show that there's no question that this is what's going on. The question I ask as an historian and philosopher of science is why is this objectionable. Basically, it's because it's not scientific.

Since the scientific revolution, the way that science has been done has been to incorporate what I would call the machine metaphor, a famous book about the scientific revolution in the sixteenth and seventeenth century, which spoke of the mechanization of the world picture. The way scientists looked at the world is by regarding the world as if it were a big machine running according to unbroken law. Intelligent design, as they themselves have admitted, is not a science because they want to say that not everything runs according to law.

Now, why do scientists accept this position? Basically, I think ultimately on pragmatic grounds—it works. It works. When you've got problems you don't give up and say, "Oh gosh, maybe God did it." What you do is say, and Thomas Kuhn pointed this out very well in his book on scientific revolutions in 1962, "Gosh, I'm not good enough. The world has beaten me but maybe later on, maybe when we've got new techniques, maybe new ways of going at things, computers, molecular biology, issues like this, maybe somewhere down the road somebody's going to succeed."

If you don't have that attitude, you can't do science. I think that's basically fundamental rule number one. Now, this does not have anything whatsoever to do with whether or not God exists. Of course, you can't believe in the fundamentalist God and believe in evolution at the same time—there's no question about that—but it does not have anything to do about whether the traditional God of the Christian or the Jew or Muslim, in fact, exists. In fact, the whole point about science, adopting machine metaphor, metaphors are very powerful things but the whole point about metaphors is they rule out certain areas of discourse. If, for instance, I say my love is like a red, red rose, I presume I'm saying that she's beautiful or maybe I'm saying she's a little bit prickly but I'm not, for instance, saying something about whether she's any good at mathematics because that metaphor is not talking about mathematics. It's directing me in different ways. Similarly, if you say the world is a machine you say nothing whatsoever about whether or not there is a God. The whole point about machines is we rule out questions to do with morality, you rule out questions to do with origins, you rule out questions to do with ultimate purposes, all of those sorts of issues. So, what I want to say is I think very strongly that intelligent design is not anti-science but deeply non-science. I'd like to say also I think that it's misguided theology at the same time. It's not just bad science but I think it's misguided theology because it just basically doesn't understand the point of what science is or is about.

I have to admit that some of my fellow scientists, or those that I cherish, are not always helpful. I mean it's not helpful when somebody like Richard Dawkins goes around saying anybody who believes in religion is either foolish or ignorant or wicked but I'd rather not think about the third option. So, I'm not pretending that it's all sweetness and light on our side and all dark on their side. I think many of my fellow science lovers are being cautious to say the very least. As I said, I think on a sociological level, a political level, it is very complex. I think on a scientific, philosophical, religious level there is something fundamentally mistaken about the whole ID movement.

This brings us back to the issue Barry's been tackling and the issue we want to talk about this afternoon, what about the whole status of intelligent design? Barry's talked about libraries particularly but let me go back to the school issue and the whole question of intelligent design in schools. You'd expect me to talk about that because I'm an educator. It's my job to talk and think about these things.

There's no place for intelligent design in biology classrooms. Whether it's legal, there simply is no place. It's not science. You don't teach non-science in science classrooms. Your good teacher is clearly going to be sensitive to this if it comes up in class. A good teacher isn't necessarily going to bat it down in seconds but before long they're going to say something like, "Well, look, this isn't really appropriate now. Why don't we get together afterwards and have a chat about it" or something like that. So, as I say, there is no place for these things in science classrooms.

The whole business of teaching the issues or something like that is simply wrong. You do not teach things in classes because people believe them very sincerely. If one goes to medical school, I would hope that a good medical school would teach their students something about alternative medicine because they're going to encounter that in the real world. There's going to be people coming into the doctor's office and saying, "Well, what do you think about the chiropractor or naturopath" or something like that or "I have a friend who went to Mexico and she was cured." You're going to deal with these things but I don't want in medical school courses on Christian Science medicine and Jehovah's Witness medicine and witchdoctor and all of these things because some people somewhere take these things seriously. All I want is modern medicine taught because what they're taught is the best that we've gotten together with the tools to take the debate further.

I would say the right kind of teaching is to teach what we know best at the moment and give the students the tools to overturn us in the next generation. That's what really good teaching is all about. So, as I say, I doubt there is any credit about ID being taught in biology classrooms. I think though and I want to conclude here, I do want to disagree with Barry on the whole question of other courses. I agree with that. I've got three teenagers and they're all in public school because I feel very strongly that one ought to use public schools. I know that teaching is often really inadequate. I did not think last year, my son was a senior, that weightlifting was an appropriate use of his time when he wasn't doing physics. So, I'm not saying that schools in America are doing a good job. No, it's silly. But some are doing really good jobs and there are some very, very fine teachers including some very fine teachers at my kid's school.

So, I'm not just trying to slag them off just like that but there's no question that we are falling behind in things like science, in physics, in chemistry, in, as Barry said, areas like geography. How many young Floridians know where Canada is? My God, how many of them know where New York City is? Why should they know where Toronto and Montreal are? So, I'm not saying that the job is good and everything is running fine but I do personally think that there ought to be places in schools as there are in universities for things like comparative religion.

I think one of the biggest problems we face today is the whole question of Islam and our ignorance of it. I think that, for instance, this is the kind of thing that we ought to be teaching our juniors and seniors in high school. I think that to give them some kind of understanding of what Islam is about, of what Judaism is about, what Buddhism is about, what all of these things are about and I think are things that ought to be taught. On that level, I would want to include Christianity. I think it's perfectly appropriate, particularly in Tallahassee. I would want people to know that there's something other than being a southern Baptist. There are people who are Roman Catholics. There are people who are Eastern Orthodox.

On that level, I think that I would allow intelligent design to get some kind of, what can I say, airing in the classroom. I would certainly be quite comfortable doing this if I had an Imam come, a Catholic priest, if I had Barry come, and to invite somebody like Michael Bigby or Bill Danski or someone like that. So, perhaps I am disagreeing with Barry here. I do think certain things appropriate at universities. I've been teaching intelligent design for forty-one years now, so it must be a religion. It's certainly appropriate at universities, but there are times when I despair of teenagers. I'm sure Barry's aliens didn't know anybody ever used the Dewey Decimal System. I thought it was Library of Congress. You're rather old-fashioned, Barry! I certainly think it should be at universities and my feeling is that at least at the junior and senior level in high school it would be appropriate in some way to talk about these sorts of things. Not in the science classrooms, but maybe elsewhere. Thank you.

Audience Question: I spent my life in youth services as a school librarian and, yes, school librarians ought to make a huge effort to purchase material that supports the curriculum, but we also worry about the whole child and the development of the whole child especially in this day of high stakes testing where so much of the curriculum is being cut out to prepare our young people for high stakes testing to ensure our funding needs. I have held the hand(s) of students as they died from HIV/AIDS, and I have purchased books on what bombs look like so they might identify them. I have purchased books on self-defense because the inner city community might be a little bit safer. The school librarian has to take into account a whole child and many of our students have parents or younger adults trying to inculcate them with religious philosophies with which they don't agree. So we purchase books about all types of religion and religious viewpoints so that young people can arm themselves with knowledge. So, I respectfully ask you to think about your notion of suggesting that school libraries, especially high schools, not collect information about every single topic known to man and a joking question I should be asking is, "How do you define pornography?"

Rev. Barry Lynn: Actually, you raised a number of important questions including this issue of cutting back

on what is in the curriculum then doesn't that give even a greater responsibility to the school library to make sure that it encompasses materials about the things that we used to teach as part of the curriculum and because of this nonsensical teaching to the test stuff. That's a very good point. I had not really thought about that before. Here is how I like issues of religion dealt with in the curriculum to go back to something that Michael talked about having in the libraries. You cannot talk about certain things without talking about their religious dimension. That is to say, you cannot teach Elizabethan poetry, you can't teach the southern literature of William Faulkner without talking about Bible allusions and, therefore, you have to have materials in the school library and that includes purchasing Bibles, even though some of you may have had people come and say why is the Bible in the school library? So, I think that there is a lot of core material including original materials, the Koran, the Bible and other religious issues that need to be there for the purpose of allusions. You can't teach World History without talking about the conflict among religions, among Christians and Protestantism and Catholicism, the battles between Christianity and Islam that some people would argue continue today.

Now, they're saying it is a cultural and not a religious phenomenon. I have no problem with any of that. The problem I have with this, in addition to the issue of where one puts it and where that places you in the community battle over this issue, is I just don't think there is any legitimate connection between anything present or formerly in the curriculum that we should be encouraging young people to read materials that are written as one thing, science, but which are clearly something else, maybe paranormal phenomenon, maybe religion, maybe something that I didn't even come across. I am very skeptical that in a time of constrained budgets and constrained acquisition budgets for libraries that this one topic deserves to be the subject of your dollars at that level.

I agree with Michael if you get to the university library, it's different. I think this idea that we're taking so much out of the curriculum and you have to supplant it with other things is a very good argument. I will give that more thought but I remain un-persuaded that high school libraries oughtt to be putting *Of Pandas and People* in their library.

Audience Question: So, how can we create citizens that will vote for school board members and vote for officials? How can we create informed citizens who will vote for judges and vote for senators who vote for the guys on the Supreme Court? We have to inform our students so that they are responsible members of our government. We are the government and if we prevent them from reading *Of Pandas* or whatever this title is then it just becomes a tug-of-war. They're going to start having conferences and suggesting that we stop having books that show women who can go out and be medical doctors. Where does it stop, this tug-of-war?

Rev. Barry Lynn: Well, but we have the tug-of-war now because in some libraries you're having fights over Harry Potter books because it promotes homosexuality and not just witchcraft. Explain that to me. I don't understand it. We have those battles all the time. The question is we come back and we say that these materials, the ones that we're talking about, women being medical doctors and that reflects the real world. That's real science. That's why you have sex education books in the public school library, appropriately so that talk about issues in ways that disturb some in the community. My problem is here are books that claim to be science that are not science. That is to say for those of us who do not believe that it is not science, we agree with the courts. I don't understand the advantage of placing into a school library with constraints on budgets a book about this non-sensical argument. It is a very tough question and I obviously wanted to provoke some interest and have.

Audience Question: First of all, I'm not a cataloger and I'm certainly not a Dewey cataloger. I think there may perhaps be a place in the philosophy classification [for intelligent design books] as well. I would suggest if there is that would probably be to my mind a much better place than any of the ones suggested so far.

Philosophy is the basic principle of what is the world and how do we know what the world is, Philosophy is a key to theology. My other thing I wanted to ask about is I think it is very ironic that the (Inaudible) collection has been criticized so heavily by the intelligent design community. Alfred Russell Wallace who was with Darwin a co-creator of the Theory of Evolution persuaded Darwin to use the term survival of the fittest instead of natural selection because he felt that natural selection implied that somebody up there was helping with the selection. It is very ironic. Can you talk about that?

Michael Ruse: You're absolutely right and, in fact, a lot of conservative Christians were quite comfortable with Darwin particularly the Calvinists who said that we've known all along that God chooses between sheep and goats. I mean seriously this is something that we've lived with all along. This anti-philosophy reminds me of when I go into bookstores and I see the category occult and philosophy, and I wonder what I'm doing for a living. □

(IFC. . . from page 224)

other personally identifiable information, whether such disclosure is inadvertent or purposeful. Third parties are not bound by library confidentiality statutes or other laws protecting the privacy of user records. For these reasons, neither the library nor the library user can be certain that confidentiality will be adequately protected.

After conference, this Q&A will be added to Questions and Answers on Privacy and Confidentiality (www.ala.org/oif/policies/interpretations/privacyqanda).

Surveillance in America. The committee discussed the emerging revelations about the National Security Agency's (NSA) involvement not merely in surveillance of phone calls, with AT&T, Verizon, and BellSouth giving the NSA their customer records, but also in an extensive data-mining program. The IFC will continue to monitor events related to this and other instances of the government's collecting information on Americans and act when appropriate. To this end, the IFC has several action items, below, that address the committee's concerns about data mining and other privacy issues.

Festschrift to Honor Gordon M. Conable. At the 2005 Midwinter Meeting, the Intellectual Freedom Round Table (IFRT), the Freedom to Read Foundation (FTRF), and the IFC began working on a Festschrift to honor Gordon M. Conable. All chapters have been accepted. All proceeds will be donated to the Gordon M. Conable Fund of the Freedom to Read Foundation.

Free Exchange on Campus. The Free Exchange on Campus (FEC) is a coalition of groups that has come together to protect the free exchange of speech and ideas on campus. It took its name from the belief that the free exchange of ideas on a college or university campus is central to the learning process. Like ALA, FEC believes this freedom is being threatened by ideological agendas, e.g., the so-called "Academic Bill of Rights" initiatives. FEC's mission is to advocate for the rights of students and faculty to hear and express a full range of ideas unencumbered by political or ideological interference.

Groups comprising the coalition include American Association of University Professors, American Civil Liberties Union, American Federation of Teachers, and United States Student Association. The Association of College & Research Libraries signed on to the coalition in May.

The IFC voted to urge the ALA Executive Board to allow ALA to become a member of the Free Exchange Coalition.

Strategic Thinking. At its Spring Meeting, the Intellectual Freedom Committee discussed how it could strategically place itself in ALA, how it could spend more of its time and energy helping to create direction for ALA, and how to continue bringing in other ALA units' expertise on its projects, as well as ensure collegial reciprocity.

The subgroups of the committee developed strategies, and the committee is prioritizing and refining these strategies, adding details on how to implement them.

Action Items

The committee anticipates the need to continue to protect and defend attacks on library users' privacy and confidentiality will continue long into the first half of this new century. The majority of the action items presented to the Council at this conference are related to privacy.

Resolution on the Retention of Library Usage Records. Librarians know that privacy is "essential to the exercise of free speech, free thought, and free association." "Privacy is important," Bruce Schneier notes in his *Wired News* article of May 18, 2006, "The Eternal Value of Privacy," "because without it, surveillance information will be abused: to peep, to sell to marketers and to spy on political enemies or, whoever they happen to be at the time." As also noted in Confidentiality of Personally Identifiable Information About Library Users, "The government's interest in library use represents a dangerous and fallacious equation of what a person reads with what that person believes or how that person is likely to behave."

In light of the pervasive data mining of American citizens," the IFC wrote "Resolution on the Retention of Library Usage Records," and moves the adoption of "Resolution on the Retention of Library Usage Records" (attached as CD#19.3):

RESOLVED, That the American Library Association urge all libraries to:

- Limit the degree to which personally identifiable information is collected, monitored, disclosed, and distributed; and
- Avoid creating unnecessary records; and
- Limit access to personally identifiable information to staff performing authorized functions; and
- Dispose of library usage records containing personally identifiable information unless they are needed for the efficient and lawful operation of the library, including, but not limited to data-related logs, digital records, vendor-collected data, and system backups; and
- Ensure that the library work with its organization's information technology unit to ensure that library usage records processed or held by the IT unit are treated in accordance with library records policies; and
- Ensure that those records that must be retained are secure; and
- Avoid library practices and procedures that place personally identifiable information on public view; and
- Assure that vendor agreements guarantee library control of all data and records; and

- Conduct an annual privacy audit to ensure that information processing procedures meet privacy requirements by examining how information about library users and employees is collected, stored, shared, used, and destroyed; and be it further

RESOLVED, That the American Library Association urge all libraries to adopt or update a privacy policy protecting users' personally identifiable information, communicating to library users how their information is used, and explaining the limited circumstances under which personally identifiable information could be disclosed; and be it further

RESOLVED, That the American Library Association urge members of the library community to advocate that records retention laws and regulations limit retention of library usage records containing personally identifiable information to the time needed for efficient operation of the library.

This resolution was endorsed in principle by the Committee on Legislation and the Intellectual Freedom Round Table.

Resolution on National Discussion on Privacy. It is not only important to the library profession to protect privacy and confidentiality, it is also important to educate the general public about "the eternal value of privacy," as Schneier terms this essential freedom.

That is, although American citizens learn through daily news reports that government agencies and corporate entities are observing, monitoring, collecting, recording, and mining private and confidential information about them without their consent, many persons appear to be willing to trade their privacy for a greater sense of security.

Therefore, the IFC urges Council to adopt this resolution to raise the consciousness of the American public on why privacy should continue to be a dearly held American value, necessary to our survival as a democracy, and moves the adoption of "Resolution on National Discussion on Privacy" (attached as CD#19.4):

RESOLVED, That the Intellectual Freedom Committee, Intellectual Freedom Round Table, and ALA Fostering Civic Engagement Member Interest Group collaborate with other ALA units toward a national conversation about privacy as an American value.

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

Resolution to Commend the John Does of the Library Connection. Those of us who joined ALA President Michael Gorman at our program "Meet John Doe" learned firsthand from George Christian, Barbara Bailey, Peter Chase, and Janet Nocek the four John Does of *Doe* v. *Gonzales* that, indeed, the government did—and very likely does—employ Section 505 of the USA PATRIOT Act. Section 505, as many of us know by now, authorizes the FBI to demand records without prior court approval and also forbids, or "gags," anyone who receives an National Security Letter (NSL) from telling anyone else about receiving it.

Because they questioned both the constitutionality of having to violate library users' privacy rights and their inability to talk about it, Christian, Bailey, Chase, and Nocek sought legal assistance from the American Civil Liberties Union (ACLU). The ACLU filed suit on behalf of the librarians, asking the court to quash the NSL and enjoin the gag order.

For almost a year, the ACLU fought to lift the gag order, challenging the government's power under Section 505 to silence the four librarians during a time of national debate on the reauthorization of the USA PATRIOT Act. In May 2006, the government withdrew its objection to the four librarians' revealing their identity, which made it possible for them to appear at our program.

Informing President Gorman that he had a surprise announcement about the Doe case for program attendees, Chase told the audience that as of June 26, 2006, the government has totally abandoned the gag order that would have silenced the Does—Christian, Bailey, Chase, and Nocek—completely for the rest of their lives, and that the government has abandoned its demand for the Library Connection user records it sought through Section 505.

"While the government's real motives in this case have been questionable from the beginning," said Ann Beeson, Associate Legal Director of the ACLU, "their decision to back down is a victory not just for librarians but for all Americans who value their privacy."

The Intellectual Freedom Committee joins our colleagues and all others who value privacy as an eternal value in thanking George Christian, Barbara Bailey, Peter Chase, and Janet Nocek for their courageous personal and professional stand to defend intellectual freedom in libraries.

Therefore, the IFC urges Council to adopt this resolution to commend the stand of our courageous colleagues, and moves the adoption of "Resolution to Commend the John Does of the Library Connection" (attached as CD#19.5):

RESOLVED, That the American Library Association strongly commend the stand of the Connecticut John Does, George Christian, Barbara Bailey, Peter Chase, and Janet Nocek, in their successful legal battle to defend the privacy of library user records; and be it further

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

RESOLVED, That the American Library Association reaffirm its opposition to sections of the USA PATRIOT Act that infringe on library patrons' ability to access library services without privacy safeguards.

Resolution Affirming Network Neutrality. The Intellectual Freedom Committee and the Committee on Legislation drafted the "Resolution Affirming Network Neutrality" to address the necessity of protecting what we have now

named "The Four Freedoms of the Internet," as outlined in the CDA decision. These four freedoms are:

1. Very low barriers to entry.
2. Barriers to entry are identical for both speakers and listeners.
3. As a result of these low barriers, astoundingly diverse content is available on the Internet.
4. The Internet provides significant access to all who wish to speak in the medium, and even creates a relative parity among speakers.

The committees acknowledge that current congressional legislation attempting to eliminate network neutrality is changing rapidly. Nonetheless, our committees fervently believe that a multitiered Internet, suggested by telecommunications giants, not only will destroy network neutrality the delivery of any content or use of any service in a neutral fashion without a preferential structure favoring some providers of content or services to the detriment of other providers but also will effectively chip away at the four freedoms of the Internet.

Therefore, the IFC and the COL urge Council to adopt this resolution and protect the right of everyone to equally and equitably access, hold, and disseminate information, and move the adoption of "Resolution Affirming Network Neutrality."

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

Projects

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

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

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

Guidelines for Graphic Novels. The Office for Intellectual Freedom, the National Coalition Against Censorship, and the Comic Book Legal Defense Fund have developed an introduction to graphic novels for librarians. It includes a brief history of the graphic novel, how to develop a graphic novel collection, a guide to graphic novels, and a bibliography. It also includes sections on "Where do libraries shelve graphic novels?" and "Dealing with Challenges to Graphic Novels." A draft was reviewed by the IFC at this conference and, after incorporating IFC edits, was distributed in the bins. Additional comments are welcome and can be sent to the Office for Intellectual Freedom. The committee anticipates a final version both in print and online will be available prior to Midwinter 2007.

ALA Library 2.0 Project. Two IFC members and two OIF staff members participated in the recent six-weeks long ALA Library 2.0 Project, in which around 50 other ALA staff and members, comprising ten teams, collaborated in learning about and using blogs, podcasts, RSS feeds, wikis, and other relatively new Web tools. Their purpose was to develop ways to deliver library services that are accessible to library users how and when they need and want them.

"Our team," Team Seven ("Webcasts and Just-in-Time Training"), designed and executed a visual podcast. This podcast, "Dealing with Challenges to Library Materials," is available for viewing and for leaving comments at its wiki, found at http://alagroupseven.pbwiki.com. For more information on the project, as well as to view other teams' projects, visit www.library2.0.alablog.org.

Law for Librarians. A major Ford Foundation grant is supporting two OIF projects—the existing Lawyers for Libraries trainings, and a new project, Law for Librarians. In the latter case, the grant enabled OIF to sponsor a three-day "Train the Trainers" in early April in Chicago presented to all state chapter IFC chairs. State library directors and ALA chapter Executive Directors also were invited and many attended. Each chapter IFC attendee committed to conducting two similar Law for Librarians trainings over the next two years. The training focused on litigation and laws that affect intellectual freedom in libraries; attendees also received training in putting together trainings, with the stated understanding that they would be obligated to organize at least two trainings in their home states on legal topics affecting libraries. Evaluations indicated that the trainings were very well received, and enthusiasm was high for continuing the work on the state level.

Confidentiality in Libraries: An Intellectual Freedom Modular Education Program. These special continuing

education materials introduced in 1993 to educate librarians on the importance of protecting confidentiality in libraries are being updated for the new millennium.

Lawyers for Libraries. Lawyers for Libraries, an ongoing OIF project, is creating a network of attorneys involved in, and concerned with, the defense of the freedom to read and the application of constitutional law to library policies, principles, and problems.

Seven regional training institutes have been held since 2002, in Boston, Chicago, Dallas, San Francisco, Washington, D.C., Atlanta, and Seattle. In April, the Texas Library Association cosponsored a Lawyers for Libraries training as a preconference at its 2006 annual conference. OIF is currently working with the Ohio Library Council on the next training, to be held November 3, 2006, in Columbus. To date, over two hundred attorneys, trustees, and librarians have attended these trainings, and an e-list has been created to allow for ongoing communication. Attorneys and library managers use their e-list, established in 2003, to consult each other on questions regarding privacy, access, and minors' use of libraries, among many other topics.

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

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

For more information about Law for Librarians or Lawyers for Libraries, please contact Jonathan Kelley at jokelley@ala.org or 1-800-545-2433, ext. 4226.

LeRoy C. Merritt Humanitarian Fund. At the 2005 Annual Conference, the LeRoy C. Merritt Humanitarian Fund celebrated its 35th anniversary. The Merritt Fund is stronger than ever, and continues to assist librarians who have been harmed in their jobs due to discrimination or their defense of intellectual freedom. For more information on the LeRoy C. Merritt Humanitarian Fund, visit www.merrittfund.org.

2006 Banned Books Week. ALA's annual celebration of the freedom to read, Banned Books Week, begins September 23 and continues through September 30, 2006; it marks BBW's twenty-fifth anniversary. This year's theme, Read Banned Books: They're Your Ticket to Freedom, highlights that intellectual freedom is a personal and common responsibility in a democratic society.

This and subsequent year's BBW posters, bookmarks, t-shirts, and other related products are being marketed by ALA Graphics (http://tinyurl.com/qrqb4). New this year, too, are downloadable BBW public service announcements. These PSAs are freely available at www.ala.org/bbooks/psas. Instructions on how to download these messages, as well as links to the necessary software you may need to preview the PSAs and tips for getting these messages aired, also are found there.

Please encourage libraries in your state to get them aired for this year's Banned Books Week. More information on the twenty-fifth BBW can be found at www.ala.org/bbooks.

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

(FTRF. . . from page 225)

to all newspapers, magazines, and books. The brief argues that the prison's policy impermissibly infringes on the First Amendment right of the prisoners to obtain information and the First Amendment right of publishers and writers to freely disseminate their works to every person. Oral arguments were heard on March 27, 2006, and we are awaiting a decision.

I am happy to report a successful result in *Lyle* v. *Warner Brothers Television Productions*, a court case filed by a writers' assistant for the *Friends* television show. The plaintiff claimed that the banter and sexual jokes the show's writers engaged in during meetings subjected her to a hostile work environment, even though none of the banter or jokes were directed at her. An intermediate California appellate court ruled that unless the production company demonstrated that the conversations were "necessary to the creative process," the comments could support a hostile work environment claim. On April 20, 2006, the California Supreme Court overturned the intermediate court's decision, finding that the writers' comments were not sufficiently severe or pervasive enough to support a hostile work environment claim. FTRF joined with ABFFE, AAP, Comic Book Legal Defense Fund (CBLDF), and PMA to file an *amicus curiae* brief in support of the show's producers. The brief argued that the "creative necessity" test eliminated crucial First Amendment protections that bar government intrusion into the creative and editorial process.

FTRF has joined with other members of the Media Coalition to file an *amicus* brief in support of the plaintiffs in *Entertainment Software Association* v. *Blagojevich*, a lawsuit seeking to enjoin enforcement of two new Illinois laws limiting the sale and rental of violent and sexually explicit computer and video games to minors and requiring

retailers to post in-store signs informing customers about the Entertainment Software Rating Board's rating system. After the federal district court enjoined enforcement of the laws, the Illinois attorney general filed an appeal with respect to the sexually explicit video game law before the Seventh Circuit Court of Appeals. It did not challenge the ruling on the violent video game law. The FTRF *amicus* brief, filed on April 7, 2006, in support of the Entertainment Software Association, argues that the law's provisions violate the First Amendment.

FTRF also pursues actions to vindicate the public's right to access government records and information. In this vein, FTRF joined with several other organizations in 2002 to file an amicus brief in *American Historical Association* v. *National Archives and Records Administration*, a challenge to the legality of Executive Order No. 13233, signed into law by President Bush on November 1, 2001. The order claims to establish procedures for implementing the Presidential Records Act of 1978 (PRA) but instead imposes restrictions that threaten the timely release of presidential and vice-presidential records in accordance with the PRA. Plaintiffs bringing the action included the American Historical Association, the National Security Archives, Public Citizen, and the Reporters Committee for Freedom of the Press. After the release of many records, the suit was dismissed in 2004 without a ruling on the legality of the executive order. However, because some records had not been released from President Reagan's records and a controversy had arisen over newly asserted privileges raised by President George W. Bush, the plaintiffs filed an amended complaint on November 30, 2005, challenging the legality of the order. FTRF and our fellow amici filed a revised version of our brief the same day. A motion for summary judgment is pending before the court.

The foundation is also participating in the following First Amendment actions:

Gonzales v. *American Civil Liberties Union* (formerly *Ashcroft* v. *ACLU*): After the Supreme Court issued an opinion upholding the injunction barring enforcement of the Children's Online Protection Act (COPA) in June 2004, it returned the lawsuit to the federal district court in Philadelphia for a trial to determine whether COPA's "harmful to minors" restrictions are the least restrictive means of achieving the government's goal of protecting children from seeing sexually explicit materials online. The parties continue to pursue discovery in preparation for an anticipated trial date of October 2006.

Chiras v. *Miller*: Author Daniel Chiras and a group of parents and students filed this class-action lawsuit against the Texas State Board of Education after the Board voted to reject Chiras' textbook *Environmental Science: Creating a Sustainable Future* for Texas high-school environmental science classes because it believed the textbook was "anti-Christian" and "anti-free enterprise." This past December, the Fifth Circuit Court of Appeals upheld the district court's decision to dismiss the lawsuit, agreeing that school boards may reject textbooks if they disagree with the author's viewpoint when such "viewpoint discrimination" is "reasonably related to legitimate pedagogical concerns." The plaintiffs decided not to seek certiorari with the U.S. Supreme Court, bringing this case to a close.

Yahoo! v. *La Ligue Contre Le Racisme et L'Antisemitisme* (LICRA): This is the suit challenging the penalties threatened by the courts in France after Yahoo! allowed Nazi-related book excerpts and auction items to be posted to its U.S. Web sites. Such postings violate French law but are fully protected speech under the American First Amendment. Two French groups, La Ligue Contre Le Racisme et L'Antisemitisme and the French Union of Jewish Students, initiated the legal action against Yahoo! in France and won the initial lawsuit. Yahoo! then filed suit in the United States to obtain a ruling on the validity of the French court's order in light of its users' First Amendment rights.

FTRF submitted an *amicus* brief in support of Yahoo!'s legal action seeking a declaratory judgment barring enforcement of the French judgment in the United States. The district court in California ruled in favor of Yahoo!, but a three-judge panel of the Ninth Circuit Court of Appeals reversed, holding that the district court lacked jurisdiction over the French defendants. Yahoo! subsequently petitioned the Ninth Circuit for a rehearing *en banc*, and FTRF joined another *amicus* brief supporting Yahoo!'s petition. The Ninth Circuit granted the petition and following oral argument, upheld the decision dismissing the suit. On April 10, 2006, Yahoo! filed a petition for certiorari with the U.S. Supreme Court, seeking review of the Ninth Circuit's decision, but the Supreme Court denied certiorari last month. The Supreme Court's decision concludes this case without any final determination of whether a foreign government's court order can be enforced in the United States against a U.S. person for publishing materials on the Internet that are legal in the United States.

The Freedom to Read: State Internet Content Laws

The Freedom to Read Foundation continues to participate as a plaintiff in lawsuits challenging state laws that criminalize the distribution of Internet content deemed "harmful to minors," to assure that those using the Internet continue to enjoy their full First Amendment rights and retain the right to determine for themselves what they read and view on the Internet.

The lawsuit we are pursuing most vigorously is *The King's English* v. *Shurtleff*, our challenge to the Utah statute extending the state's "harmful to minors" prohibitions to the Internet. Among its most problematic provisions are sections requiring the creation of an Adult Content Registry for Web sites, requirements that Internet service providers block the Web sites listed in the registry, and a requirement that content providers evaluate and label content as

"harmful to minors." The state's motion to dismiss all but three of the plaintiffs remains pending before the federal district court in Utah; the court refrained from ruling after representatives of the Utah legislature agreed to consider amending the legislation. The proposed bill did not pass, and the court has entered an order scheduling a trial date in January 2007. An order barring enforcement of the statute remains in effect.

FTRF joined with ABFFE, AAP, CBLDF, the ACLU of Utah, and several Utah bookstores, Internet providers, and residents to bring this lawsuit.

ABFFE v. *Petro* (formerly *Bookfriends, Inc*. v. *Taft*), a challenge to the Ohio obscenity statute and "harmful to minors" law addressing both print materials and Internet content, remains pending before the federal district court in Ohio. In September 2004, Judge Walter Rice sustained in part and overruled in part both plaintiffs' and defendants' motions for summary judgment. The parties are still waiting for an expanded opinion to learn the specifics of the ruling.

Defending Privacy and Confidentiality

In addition to the two *Doe* v. *Gonzales* cases mentioned at the beginning of this report, FTRF is involved in other litigation involving privacy and confidentiality.

We patiently await a decision in *Muslim Community Association of Ann Arbor* v. *Ashcroft*, the facial legal challenge to Section 215 of the USA PATRIOT Act, which amends the business records provision of the Foreign Intelligence Surveillance Act to permit FBI agents to obtain all types of records—including library records—without a showing of probable cause. The district court in Michigan heard oral arguments on the government's motion to dismiss the plaintiffs' complaint in December 2003. There is no indication when a decision will be forthcoming.

FTRF has joined with Public Citizen to file an *amicus* brief supporting the right to read anonymously in the legal action entitled *Forensic Advisors, Inc*. v. *Matrixx Initiatives, Inc*. This lawsuit challenges a subpoena issued by Matrixx Initiatives that seeks to discover the names of persons subscribing to a financial advisor's newsletter published by Forensic Advisors, Inc. Forensic Advisors, an independent financial research firm, published a report on Matrixx Initiatives, the maker of Zicam cold remedies. Matrixx alleges that news sources for the newsletter or the newsletter's subscribers may be responsible for anonymous Internet posts Matrixx claims are defamatory. Oral arguments are now pending before the Maryland Court of Special Appeals.

Awards

I am pleased to report the Foundation was this year's recipient of the Independent Voters of Illinois-Independent Precinct Organization's "Legal Eagle Award." I accepted the award on behalf of the Foundation at a dinner in Chicago earlier this month.

We also this week expect to receive a donation from the Data Research Users' Group, upon the dissolution of that organization. The donation of at least $22,600 will be of tremendous help to the Foundation.

State Legislation

This year we saw an increase in mini-CIPA legislation on the state level, tying filtering to funding of libraries. In Kansas, the legislature tried to pass a law that would remove sales tax exemptions from friends groups affiliated with libraries that did not have Internet filters. In Oklahoma, a bill was introduced to withdraw funding from any library that did not create a special "adults-only" section for "homosexually themed" and "sexually explicit" material. Neither bill passed. However, video games remain the most popular target of those who would restrict access to protected materials on the state level. In addition to the Illinois case discussed above, litigation was filed last week in Louisiana against a similar law.

Fundraising

Following our very successful fundraiser with Sandra Cisneros in San Antonio, we are scheduled to have a reading and book signing at Seattle's Midwinter Meeting featuring Washington state's very own young-adult author, Chris Crutcher, author of a number of banned and challenged books, including *Athletic Shorts* and *Whale Talk*. Please keep your eyes open for more information about this exciting program.

Additionally, at this meeting the Board created a special "organizational member" category to encourage libraries and other institutions to support the Freedom to Read Foundation at a more substantial level. The membership level will be initiated during this fall's membership drive and fully implemented at the beginning of our 2007 member year in April.

The Board also amended our Constitution and Bylaws at this conference incorporating several changes recommended by ALA's Parliamentarian, Eli Mina.

We encourage all of our colleagues and friends to become members of the Freedom to Read Foundation. Please send a check to:

Freedom to Read Foundation
50 E. Huron Street
Chicago, IL 60611

You can also use a credit card to join the Foundation. Call (800) 545-2433 ext. 4226 or visit us online at www.ftrf.org to use our online donation form. □

(flag amendment. . . from page 228)

stop," said Daniel S. Wheeler, an American Legion official who leads the advocacy group.

Prior to the vote on the amendment itself, the senate voted 64–36 against a proposed bill that would have criminalized flag desecration. Senator Richard J. Durbin of Illinois, the second ranking Senate Democrat, said his plan had been written to avoid Supreme Court objections, but backers of the constitutional approach dismissed that idea.

President Bush, whose father was president when the flag fight initially erupted in the aftermath of two high court rulings, said he was disappointed in the outcome. "I commend the senators from both parties who voted to allow the amendment ratification process to protect our flag to go forward, and continue to believe that the American people deserve the opportunity to express their views on this important issue."

The House has routinely approved the flag amendment on bipartisan votes and did so last year. Had the Senate passed the amendment, it would have been likely to win ratification from the required thirty-eight states since, supporters say, all states have endorsed the amendment in some form.

While the amendment gained three votes since it was last considered in 2000, its future prospects are uncertain. Senator Mitch McConnell, Republican of Kentucky, is in line to become the Republican leader in the next Congress, and he opposes the initiative on free speech grounds. In addition, most analysts expect Republicans to lose Senate seats in the November election.

"This would have been the easiest time to get it through," said Senator Charles E. Schumer, Democrat of New York, who opposed it.

The American Civil Liberties Union, which has been deeply involved in opposing the amendment for years, credited the senators who took a potentially politically tough vote to block it. "The Senate came close to torching our Constitution, but luckily it came through unscathed," said Caroline Fredrickson, director of the organization's Washington legislative office. "We applaud those brave senators who stood up for the First Amendment and rejected this damaging and needless amendment."

Besides senators up for re-election, the issue also divided lawmakers considered possible presidential candidates in 2008. Those voting yes included Frist, George Allen of Virginia, John McCain of Arizona, Sam Brownback of Kansas and Chuck Hagel of Nebraska, all Republicans, and Evan Bayh of Indiana, a Democrat. Voting no on the Democratic side were Christopher J. Dodd of Connecticut, Hillary Rodham Clinton of New York, Joseph R. Biden Jr. of Delaware, Russell D. Feingold of Wisconsin and John Kerry of Massachusetts. Reported in: *New York Times*, June 28. □

another public broadcasting battle

Less than a year after the chairman of the Corporation for Public Broadcasting was forced to resign amid charges that he injected partisanship into the agency, President Bush has nominated to the nonprofit's board a television sitcom producer who has described himself as "thoroughly conservative in ways that strike horror into the hearts of my Hollywood colleagues."

The nomination of Warren Bell, executive producer of ABC's *According to Jim* and a contributor to the online edition of the conservative *National Review* magazine, has puzzled and alarmed some public broadcasters, who fear he would revive the sharp political debate that engulfed the system last year.

Bell said he was surprised by his nomination but stressed that he had no intention of letting his personal political beliefs influence his role on the board. He asked skeptics to withhold judgment until they have a chance to hear about his goals for the post.

"I have every intention of working in a nonpartisan fashion with CPB," he said. "Anybody who spends fifteen minutes talking to me will find that I am an eminently reasonable man."

But Bell's past comments have raised eyebrows among some Democrats who serve on the Senate Commerce Committee, which must approve his nomination. Questions about his qualifications are expected to dominate his confirmation hearing.

"Based on what we know right now, this nominee doesn't appear to have the credentials and background one would expect for this position, which is in contrast to the other nominees," said California Sen. Barbara Boxer, a committee member. "I am also concerned about some of the partisan statements Mr. Bell has made over the years."

The disquiet over Bell's nomination came on the heels of last year's controversy, triggered by then-board Chairman Kenneth Y. Tomlinson, who worked aggressively to right what he saw as a liberal slant at PBS and NPR. Tomlinson was ultimately forced to resign in November after an internal investigation by the corporation's inspector general found that his push for more conservative viewpoints on the air broke federal law and violated the agency's policies. The CPB, a private nonprofit responsible for distributing federal funds to local television and radio stations, is supposed to serve as a political buffer for public broadcasting.

Bush nominated Bell in late June to fill Tomlinson's former slot on the nine-member board (although he would not serve as chairman, a position that the board selects separately). After reading his postings on the National Review Online, public broadcasters grew worried that he has his own partisan agenda.

"We are definitely concerned about Warren Bell's nomination," said John Lawson, president of the Association of

Public Television Stations. "After the damage caused by Ken Tomlinson's activities, the last thing we need on the CPB board is another ideologue of any stripe."

There's no question Bell has been outspoken in his political views. In frequent postings to the National Review Online during the last two years, he described himself as a "not-so-secret conservative" and lamented the liberalism of his colleagues in the entertainment industry. In one particularly controversial blog entry last August, he expressed frustration at being asked by Disney executives to cast more minorities on "According to Jim."

Most of Bell's pieces for *National Review* Online have been jocular essays on topics as varied as Carol Burnett, his Maserati, and condom commercials. But some contained partisan gibes. "I could reach across the aisle and hug Nancy Pelosi, and I would, except this is a new shirt, and that sort of thing leaves a stain," he wrote in May 2005.

Bell said the statement was a joke intended for the website's conservative readers. "If Congresswoman Pelosi would like a hug, it's there for her," he said. "What I do for the *National Review* is speak my mind and generally try to be funny," Bell added. "My intent for my service with CPB is to ensure a strong healthy, vibrant public broadcasting system for everyone to be proud of. My politics can't enter into it. It's not a partisan position."

Many public broadcasting officials were perplexed when the White House tapped Bell to be on the board, along with two other expected nominees: former Arkansas Sen. David H. Pryor and Chris Boskin, a board member of San Francisco's KQED. Although he has worked for seventeen years as a writer and producer for sitcoms such as *Life's Work*, *Ellen*, and *Coach*, Bell, 43, does not have any public broadcasting experience.

"So far as we can tell, Mr. Bell only brings a history of questionable comments about women, minorities and the media, and no discernible relevant achievement, involvement or commitment to public broadcasting," said NPR spokeswoman Andi Sporkin. "It's curious to us that a nomination process that has forwarded such qualified candidates as Sen. Pryor and Ms. Boskin has also put forth Mr. Bell."

For his part, Bell said he does not know why he was chosen for the CPB board, a position he said he did not seek out, but speculated that he came to the attention of the White House because of his writings for the National Review. He said he first learned of the nomination last fall, when a White House official e-mailed him to say that he was being considered.

"It took me by surprise, but I was deeply honored by it," he said. "I think what I bring is leadership and a knowledge and understanding of the media world that we live in. I see this as an opportunity to give back and serve the country and do something for public broadcasting, which has a long and honorable tradition."

He took a lighter tone in a blog posting after his nomination, writing: "I intend to open my confirmation hearing thusly: 'Ladies and Gentlemen of the Senate, three words: No. More. Elmo.'" He added: "Other than getting rid of high-pitched-talking red monsters, I have no agenda."

Bell said his comment was "completely facetious," but his flippant tenor offended some broadcasters.

In fact, Bell said he is a big supporter of programs like *Sesame Street*, which one of his sons watched avidly when he was younger, and that he has been "blown away" by some recent PBS programs, including the American Masters series. He said he'd like PBS to concentrate more on scripted programming, an area in which he believes he could help, and on developing a stronger schedule throughout the week.

"PBS is the only American television network not bound by the strictures of commercialism," he said. "It ought to be the best TV we have."

Bell admitted that he has "limited" familiarity with NPR, adding that he usually listens to sports talk radio during his twenty-minute commute to his Studio City office. "It's something I have to work on," he said. "I expect to do an enormous amount of learning in the next few months." Reported in: *Los Angeles Times*, July 14. □

Caywood named 2006 Freedom to Read Foundation Roll of Honor Award recipient

Carolyn Caywood, manager of the Virginia Beach Public Library's Bayside Area Library and Special Services Library for the Blind & Physically Handicapped, is the recipient of the 2006 Freedom to Read Foundation (FTRF) Roll of Honor Award. Caywood is a past FTRF Trustee and currently is the Intellectual Freedom Round Table's (IFRT) representative to the American Library Association's (ALA) Council. She also has served as chair of IFRT and of the Virginia Library Association's Intellectual Freedom Committee.

A strong advocate for youth, Caywood wrote a column for *School Library Journal* from 1990 through 1998; she also testified before the U.S. Congress, supporting the rights of young people in regard to the Child Online Protection Act and the Children's Internet Protection Act. A librarian since 1972, Caywood has worked in the Virginia Beach Public Library system since 1979. In 2004, she was named one of twenty-seven *New York Times* Librarians of the Year.

"Carolyn was a clear choice for this year's Roll of Honor Award," said FTRF Executive Director Judith Krug.

"She is a highly active leader in advocating for intellectual freedom and for young people in Virginia and around the country. She has been a terrific supporter and promoter of the Freedom to Read Foundation for two decades. And she has brought her talents to bear in helping to formulate and pass landmark intellectual freedom policies within the American Library Association. I look forward to seeing Carolyn accept this award and seeing her name in the illustrious company of the other Roll of Honor awardees."

The award was presented at the 2006 American Library Association (ALA) Annual Conference during its Opening General Session on June 22 in New Orleans. ☐

Free people read freely.®

Join the Freedom to Read Foundation.

The Freedom to Read Foundation leads efforts to stop censorship wherever it arises. The Foundation works with librarians, authors, booksellers and civil libertarians to ensure that *you* decide what *you* want to read.

BY JOINING FTRF, YOU WILL

- Help defend the First Amendment in the courts—including the U.S. Supreme Court
- Support librarians around the country besieged by attempts to restrict library materials and services
- Expand the freedom to read by offering legal and financial help in cases involving libraries and librarians, authors, publishers, and booksellers.
- Receive the quarterly *Freedom to Read Foundation News*, which includes articles and timely reports on censorship trends, current court cases, and more.

Complete the form below and mail it to:
Freedom to Read Foundation
50 East Huron Street
Chicago, IL 60611

You also can donate online at **www.ftrf.org** or fax your credit card donation to **312-280-4227**.

For more information, call **(800) 545-2433 x4226** or email **ftrf@ala.org**.

Thank you for your support!

Note: If you are already a member of the Foundation, you may use this form to renew your membership. If you are unsure of your current membership status, please contact us at (800) 545-2433 x4226 or ftrf@ala.org.

Yes, I would like to be a ☐ NEW ☐ RENEWING member of the Freedom to Read Foundation.

I am contributing $_____

$1000.00 Benefactor	$500.00 Patron	$100.00 Sponsor	$50.00 Contributing Member	$35.00 Regular Member	$10.00 Student Member

☐ My check is enclosed. **☐ My *(mark one)* Visa/MasterCard/American Express number is:**

_____ Exp. _____

NAME _____

ADDRESS _____ CITY _____

STATE _____ ZIP CODE _____ E-MAIL _____

Please make your check payable to Freedom to Read Foundation. Your membership is tax deductible.

intellectual freedom bibliography

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

Boston, Rob. "The Religious Right and American Freedom," *Church and State*. vol. 59, no. 6, p. 4.

Burns, Elizabeth. "Net Neutrality Falters," *School Library Journal.* vol 52 no. 7, p. 18.

"An ELF in the Library?" *Library Journal Netconnett,* v. 131 n. 10. p. 2.

"Few Americans Know First Amendment, Poll Shows," *Church and State*, vol. 59, no. 4, p. 3.

"Flag Desecration Amendment Advances in Senate," *Church and State*, vol. 59, no. 6, p. 3.

Hentoff, Nat. "Supreme Court Obscenity," *The Village Voice*, vol. LI, no. 30, p. 16.

Manzo, Kathleen Kennedy "Author; Publisher at Odds Over Content of Talk," *Education Week*, vol. 25, no. 38, p. 12.

Manzo, Kathleen Kennedy. "Book on Cuba Prompts Lawsuit," *Education Week*, vol. 25, no. 42, p. 3.

McCafferty, Dominique. "Geography of a Writer: An Interview with Brent Hartinger," *Public Libraries*, vol. 45, no. 4, p. 27.

Oder, Norman. "Patriot Act Compromise Criticized," *Library Journal*, vol. 131, no. 5, p. 16.

Oder, Norman. "Full Filtering at WA Library," *Library Journal*, vol. 131, no. 5, p. 17.

Oder, Norman. "Will CIPA Be Expanded?" *Library Journal* vol. 131, no. 10, p. 17. "Open Net" *The New Republic*, vol. 234, n. 4,771, p. 7.

Trotter, Andrew. "Anti-Social Networking," *Education Week*, vol. 25, no. 38, p. 27.

Trotter, Andrew. "Public Employees Speech Rights Curtailed," *Education Week*, vol. 25, no, 39, p. 7.

Weiss, Laura B. "Patriot Act Reauthorized with Few Changes." *School Library Journal*, April 2006, p. 19.

Whelan, Debra Lau. "Schools Crack Down on Teen Social Site," *School Library Journal*, April 2006, p. 18.

NEWSLETTER ON INTELLECTUAL FREEDOM
50 East Huron Street • Chicago, Illinois 60611