newsletter on intellectual freedom

IFC ALA

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Connecticut librarians drop John Doe gag

Four Connecticut librarians who had been barred from revealing that they had received a request for patrons' records from the federal government spoke out May 30 expressing frustration about the sweeping powers given to law enforcement authorities by the USA PATRIOT Act.

The librarians took turns at the microphone at their lawyers' office and publicly identified themselves as the collective John Doe who had sued the United States attorney general after their organization received a confidential demand for patron records in a secret counterterrorism case. They had been ordered, under the threat of prosecution, not to talk about the request with anyone. The librarians, who all have leadership roles at a small consortium called Library Connection in Windsor, Connecticut, said they opposed allowing the government unchecked power to demand library records and were particularly incensed at having been subject to the open-ended nondisclosure order.

"I'm John Doe, and if I had told you before today that the FBI was requesting library records, I could have gone to jail," said one of the four, Peter Chase, a librarian from Plainville who is on the executive committee of Library Connection's board.

The organization won part of its court fight when a three-judge panel of the United States Second Circuit Court of Appeals in Manhattan dismissed the government's appeal and allowed a lower court judge's revocation of the nondisclosure order to stand. But the four librarians say they remain concerned that other provisions of the PATRIOT Act could deter people from using libraries.

"I am relieved that a federal court has at long last lifted a PATRIOT Act gag order and allowed me to acknowledge that I am the recipient of a National Security Letter (NSL) on behalf of my organization, Library Connection," asserted Executive Director George Christian at the May 30 press conference at the New York City headquarters of the American Civil Liberties Union. The statement ended months of speculation that the Library Connection—a nonprofit consortium of twenty-seven public and academic

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groups criticize Bush's PATRIOT Act signing statement

A coalition of librarians, booksellers, publishers, and writers has accused President Bush of undermining new provisions in the reauthorized PATRIOT Act that require him to inform Congress how the FBI is using its expanded police powers, including those authorizing access to library and bookstore records.

In a March 30 press release, the Campaign for Reader Privacy—a joint initiative of the American Booksellers Association, American Library Association, Association of American Publishers, and PEN American Center—condemned Bush's March 9 PATRIOT Act signing statement, an official document in which a president spells out his understanding of a bill he is signing into law, as undercutting congressional oversight.

Bush wrote that the executive branch would treat the provisions "in a manner consistent with" his authority to "withhold information the disclosure of which could impair foreign relations, national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties."

"It is simply outrageous that the president thinks he can choose the sections of the law he wants to enforce and ignore the rest," said ABA Chief Operating Officer Oren Teicher. ALA President Michael Gorman added, "It is up to the Congress to ensure that every aspect of the PATRIOT law as written, including reporting requirements, be enforced."

One of the oversight provisions in the revised law requires the Department of Justice to report in April of every year the number of bookstore and library searches it has conducted under Section 215, which gives the FBI the authority to search records it believes are relevant to a terrorist investigation. Reported in: *American Libraries Online*, March 31. ☐

FBI seeks to search journalist's archives for classified documents

The FBI is demanding access to some two hundred boxes of the papers and notes of Jack Anderson that the late investigative journalist's family is donating to the George Washington University library to remove any leaked classified documents. However, the family has resisted the government's efforts, claiming that turning over the materials would be inconsistent with the reporter's life work.

Anderson's son Kevin said that allowing federal agents to search the papers would betray his father's principles and intimidate other journalists, adding that the family was willing to go to jail over the matter.

"It's been determined that among the papers there are a number of classified U.S. government documents," said FBI spokesman Bill Carter. "Under the law, no private person may possess classified documents that were illegally provided to them. These documents remain the property of the government."

Duane E. Webster, executive director of the Association of Research Libraries, said that the FBI's actions were "deeply disturbing and deeply in conflict with the academy's interests in freedom of inquiry, research, and scholarship." Tracy B. Mitrano, an adjunct assistant professor of information science at Cornell University, said, "Once you begin taking records out of library archives that researchers rely on for free inquiry and research purposes, it would be very difficult not to see it as a slippery slope toward government controlling research in higher education and our collective understanding of American history."

Anderson, who died last December, was a muckraking journalist who exposed the Iran-Contra affair, a CIA plot to assassinate Fidel Castro, and congressional corruption. He won a Pulitzer Prize in 1972 for his reporting on secret American involvement in the 1971 Indo-Pakistan War.

The FBI has said if the agency cannot reach an agreement with the family, it would ask the Justice Department to take action. Reported in: *American Libraries Online*, April 21. ☐

FBI acknowledges journalists' records fair game for searches

The FBI acknowledged May 15 that it is increasingly seeking reporters' phone records in leak investigations. "It used to be very hard and complicated to do this, but it no longer is in the Bush administration," said a senior federal official.

The acknowledgement followed reports that ABC News reporters had been warned by a federal source that the government knew who they were calling. FBI officials did not deny that phone records of ABC News, the *New York Times* and the *Washington Post* had been sought as part of a investigation of leaks at the CIA.

In a statement, the FBI press office said its leak investigations begin with the examination of government phone records. "The FBI will take logical investigative steps to determine if a criminal act was committed by a government employee by the unauthorized release of classified information," the statement said.

Officials said that means that phone records of reporters will be sought if government records are not sufficient.

Officials said the FBI makes extensive use of a new provision of the PATRIOT Act which allows agents to seek information with what are called National Security Letters (NSL). The NSLs are a version of an administrative sub-

poena and are not signed by a judge. Under the law, a phone company receiving a NSL for phone records must provide them and may not divulge to the customer that the records have been given to the government. Reported in: abcnews .com, May 16. ☐

Gonzales says prosecution of journalists possible

The government has the legal authority to prosecute journalists for publishing classified information, Attorney General Alberto R. Gonzales said May 21. "There are some statutes on the book which, if you read the language carefully, would seem to indicate that that is a possibility," Gonzales told viewers of the ABC News program *This Week*.

"That's a policy judgment by the Congress in passing that kind of legislation," he continued. "We have an obligation to enforce those laws. We have an obligation to ensure that our national security is protected."

Asked whether he was open to the possibility that *The New York Times* should be prosecuted for its disclosures in December concerning a National Security Agency surveillance program, Gonzales said his department was trying to determine "the appropriate course of action in that particular case."

"I'm not going to talk about it specifically," he said. "We have an obligation to enforce the law and to prosecute those who engage in criminal activity."

Though he did not name the statutes that might allow such prosecutions, Gonzales was apparently referring to espionage laws that in some circumstances forbid the possession and publication of information concerning the national defense, government codes and "communications intelligence activities." Those laws are the basis of a pending case against two lobbyists, but they have never been used to prosecute journalists.

Some legal scholars say that even if the plain language of the laws could be read to reach journalists, the laws were never intended to apply to the press. In any event, these scholars say, prosecuting reporters under the laws might violate the First Amendment.

Gonzales said the administration promoted and respected the right of the press that is protected under the First Amendment. "But it can't be the case that that right trumps over the right that Americans would like to see, the ability of the federal government to go after criminal activity," he said. "And so those two principles have to be accommodated."

Gonzales sidestepped a question concerning whether the administration had been reviewing reporters' telephone records in an effort to identify their confidential sources. "To the extent that we engage in electronic surveillance or surveillance of content, as the president said, we don't engage in domestic-to-domestic surveillance without a court order," he said. "And obviously if, in fact, there is a basis under the Constitution to go to a federal judge and satisfy the constitutional standards of probable cause and we get a court order, that will be pursued." Reported in: *New York Times*, May 22. ☐

Al-Arian reaches deal with prosecutors to be deported

Sami Al-Arian, the former University of South Florida professor whose trial on terrorism charges ended with a partial acquittal last year, has reached a deal with federal prosecutors under which he will be deported, though the details of the agreement were not released.

In December, a federal jury found Al-Arian not guilty on eight counts of engaging in terrorism-related activities and deadlocked on another nine. The former professor had been accused of involvement with Palestinian Islamic Jihad, a group believed to sponsor suicide bombings in Israel, the Gaza Strip, and the West Bank.

The verdict was seen as a major embarrassment to the U.S. government, which had been tracking Al-Arian for years and presented secret recordings and records of bank transactions that it said proved his guilt. The government had the option of retrying him on the nine counts on which the jury deadlocked.

One of Al-Arian's former lawyers, William B. Moffitt, told a Florida newspaper that he had helped craft the deal and that Al-Arian would admit to being involved with the Palestinian Islamic Jihad. Al-Arian's defense team had acknowledged during the trial that he was involved with the organization but argued that he did not support the aims of its violent members.

"Was it worth it, from our standpoint, for Sami to go to trial again?" Moffitt said. "The government was never going to agree to not deporting Sami."

In 2003, Mr. Al-Arian was arrested, and he has been in prison ever since. That same year he was fired from his position as a tenured professor of computer engineering at the University of South Florida, a move that outraged some of his colleagues. His daughter said she and the rest of Al-Arian's family were hopeful that he will finally be released. "As long as my father is out— that's what's important," said Laila Al-Arian. "We're hoping to be reunited with him very soon. It's been over three years, three very trying years. We're relieved that this may be the end of the nightmare." Reported in: *Chronicle of Higher Education* online, April 17. ☐

AAUP supports controversial speakers on campuses

The American Association of University Professors has published a policy statement that defends the right of campus groups to invite provocative speakers to their universities.

The statement, which was approved by the association's Committee A on Academic Freedom and Tenure, comes a year and a half after a U.S. presidential campaign that was rife with campus-speaker controversies and cancellations. Many of those controversies involved Michael Moore's Slacker Uprising Tour, an effort by the documentary filmmaker to mobilize college students against President Bush's re-election.

In the fall of 2004, Moore was disinvited from speaking engagements at California State University at San Marcos and at George Mason University. Administrators at Florida Gulf Coast University also postponed an October 2004 speech by Terry Tempest Williams, an environmental writer critical of President Bush, until after Election Day. Around the same time, a spate of conservative commentators, including Ann Coulter and William Kristol, had pies thrown at them during campus talks.

"The university is no place for a heckler's veto," the AAUP statement said. But it reserves most of its criticism for administrators who clamp down on outspoken visitors.

"College and university administrators have displayed an increasing tendency to cancel or withdraw funding from otherwise legitimate invitations to noncampus speakers," the statement says. It notes that administrators who want to cancel an appearance by a firebrand often deploy one of several standard arguments. They say they are worried for the safety of the speaker, they cite concerns over a lack of balance in university discourse, or they say that by inviting a partisan speaker to their campus, the university risks violating its tax-exempt status.

"These reasons for canceling outside speakers are subject to serious abuse," the statement says. "Their proper application should be limited to very narrow circumstances that only rarely obtain." The statement then tackles each of those arguments in turn.

"Only in the most extreme and extraordinary circumstances can the near certainty of imminent danger justify rescinding an invitation," it says in regard to concerns over the safety of controversial speakers.

With respect to balance, the statement says, "So long as the range of a university's extracurricular programming is educationally justifiable, the specific invitations of particular groups should not be vetoed by university administrators."

And on the question of a university's tax status, the AAUP says that "overly restrictive interpretations of Section 501(c)(3) have become an excuse for preventing campus groups from inviting politically controversial speakers." It goes on to say that "invitations made to outside speakers by students or faculty do not imply approval or endorsement by the institution of the views expressed by the speaker." Reported in: *Chronicle of Higher Education* online, April 28. □

scientists charge government gagging

Scientists doing climate research for the federal government say the Bush administration has made it hard for them to speak forthrightly to the public about global warming. The result, the researchers said, is a danger that Americans are not getting the full story on how the climate is changing.

Employees and contractors working for the National Oceanic and Atmospheric Administration, along with a U.S. Geological Survey scientist working at an NOAA lab, said in interviews that over the past year administration officials have chastised them for speaking on policy questions; removed references to global warming from their reports, news releases and conference Web sites; investigated news leaks; and sometimes urged them to stop speaking to the media altogether. Their accounts indicate that the ideological battle over climate-change research, which first came to light at NASA, is being fought in other federal science agencies as well.

These scientists—working nationwide in research centers in such places as Princeton, New Jersey, and Boulder, Colorado—say they are required to clear all media requests with administration officials, something they did not have to do until the summer of 2004. Before then, climate researchers—unlike staff members in the Justice or State departments, which have long-standing policies restricting access to reporters—were relatively free to discuss their findings without strict agency oversight.

"There has been a change in how we're expected to interact with the press," said Pieter Tans, who measures greenhouse gases linked to global warming and has worked at NOAA's Earth System Research Laboratory in Boulder for two decades. He said that although he often "ignores the rules" the administration has instituted, when it comes to his colleagues, "some people feel intimidated—I see that."

Christopher Milly, a hydrologist at the U.S. Geological Survey, said he had problems twice while drafting news releases on scientific papers describing how climate change would affect the nation's water supply. Once in 2002, Milly said, Interior officials declined to issue a news release on grounds that it would cause "great problems with the department." In November 2005, they agreed to issue a release on a different climate-related paper, Milly said,

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NSA rejected system that sifted phone data legally

The National Security Agency developed a pilot program in the late 1990s that would have enabled it to gather and analyze huge amounts of communications data without running afoul of privacy laws. But after the September 11 attacks, it shelved the project—not because it failed to work but because of bureaucratic infighting and a sudden White House expansion of the agency's surveillance powers, according to several intelligence officials.

The agency opted instead to adopt only one component of the program, which produced a far less capable and rigorous program. It remains the backbone of the NSA's warrantless surveillance efforts, tracking domestic and overseas communications from a vast databank of information, and monitoring selected calls.

The program the NSA rejected, called ThinThread, was developed to handle greater volumes of information, partly in expectation of threats surrounding the millennium celebrations. Sources say it bundled four cutting-edge surveillance tools. ThinThread would have:

- Used more sophisticated methods of sorting through massive phone and e-mail data to identify suspect communications.
- Identified U.S. phone numbers and other communications data and encrypted them to ensure caller privacy.
- Employed an automated auditing system to monitor how analysts handled the information, in order to prevent misuse and improve efficiency.
- Analyzed the data to identify relationships between callers and chronicle their contacts. Only when evidence of a potential threat had been developed would analysts be able to request decryption of the records.

"Given the nature of the work we do, it would be irresponsible to discuss actual or alleged operational issues as it would give those wishing to do harm to the U.S. insight and potentially place Americans in danger," said NSA spokesman Don Weber. "However, it is important to note that NSA takes its legal responsibilities very seriously and operates within the law."

In what intelligence experts describe as rigorous testing of ThinThread in 1998, the project succeeded at each task with high marks. For example, its ability to sort through huge amounts of data to find threat-related communications far surpassed the existing system, sources said. It also was able to rapidly separate and encrypt U.S.-related communications to ensure privacy.

But the NSA, then headed by Air Force Gen. Michael V. Hayden, recently confirmed as director of the CIA, rejected both of those tools, as well as the feature that monitored

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Internet filters screen out political, scientific material well beyond stated intent, report finds

On May 17, the Brennan Center for Justice released "Internet Filters: A Public Policy Report," a detailed survey of tests and studies documenting how the widespread use of filters limits the free exchange of ideas necessary in a healthy democracy. The report shows that filters are an unreliable and inefficient means of preventing children from viewing material that their parents find offensive. Some filters censor political and other information, casting a net far wider than is necessary for any legitimate goal.

As a result of the Children's Internet Protection Act, or CIPA, passed in 2000, filters are now required in most schools and libraries for adults and minors alike. Yet because filters must, by necessity, search the web for potentially objectionable sites using "keyword" identification, they both "overblock" (censoring sites that are not objectionable) and "underblock" (failing to identify pornography or other material targeted by their various blocking categories).

"Internet Filters" updates and expands upon an earlier survey published by the Brennan Center's Free Expression Policy Project (FEPP) in 2001. The new report describes the effects of CIPA and the deceptiveness of manufacturers' claims to have improved the accuracy of filters with sophisticated "artificial intelligence" techniques. It then describes nearly one hundred tests and studies up through 2006, with hundreds of examples of both deliberate and accidental overblocking.

For instance, one filtering program, SurfWatch, blocked the University of Kansas's Archie R. Dykes Medical Library website upon detecting the word "dykes." Cyber Patrol blocked a Knights of Columbus site and a site for aspiring dentists when set to block only "sexually explicit" materials. SmartFilter blocked the Declaration of Independence, Shakespeare's complete plays, Moby Dick, and *Marijuana: Facts for Teens*, a brochure published by the National Institute on Drug Abuse.

Marjorie Heins, co-author of the report and founder of FEPP, commented: "Filters are crude and error-prone because they categorize expression without regard to its context, meaning, and value. Although some may say that the debate is over and that filters are now a fact of life, it is never too late to rethink bad policy choices."

The report's findings demonstrate the problems that arise when filters block access to websites that discuss controversial topics like sex education, or provide information on health, religion, or politics. For example, when set to the "typical school filtering" option, Bess blocked a "Hillary for President" Web site and the homepage of the

Traditional Values Coalition, a non-denominational church lobby. Though blocked because they contain keywords that someone deemed "harmful to minors," or because a company staffer thought the site inappropriate, these sites often provide useful information, and serve as educational tools in schools and libraries.

The blocking decisions of some filtering programs reflect a particular ideological stance. For instance, when set to block "hate/discrimination" or "hate speech", Bess and SurfControl blocked a Web site with curriculum materials on Populism because the site contained information about National Socialism. Symantec filters blocked the National Rifle Association's homepage and other pro-gun websites but did not block sites associated with the Brady Center or other anti-gun groups.

To promote Internet safety without censoring useful research and debate, the report recommends: avoiding filters that use blocking categories that reflect a particular ideological viewpoint, choosing filters that allow for easy disabling and unblocking, and developing educational programs that promote online safety and media literacy in place of filtering.

The full report is available at www.fepproject.org/policyreports/filters2.pdf. □

Bush, Justice Department win 2006 Muzzles

President Bush and the Justice Department are among the winners of the 2006 Jefferson Muzzle awards, given by a free-speech group to those it considers the most egregious First Amendment violators in the past year.

Bush led the list, compiled by the Thomas Jefferson Center for the Protection of Free Expression, for authorizing the National Security Agency to tap the phones of U.S. citizens who make calls overseas. The wiretaps were conducted without authorization from a federal court. The White House defended the warrantless wiretapping program as necessary to fight terrorism.

The Justice Department earned a Muzzle for demanding that Google turn over thousands of Internet records, prompting concerns that more invasive requests could follow if the government prevails.

"If individuals are fearful that their communications will be intercepted by the government, such fears are likely to chill their speech," the Jefferson center said.

Other winners of the 15th annual awards included the Department of Homeland Security for barring an air marshal from expressing concerns about public safety; the Yelm, Washington, City Council for banning the words "Wal-Mart" and "big-box stores" at public hearings; and students at the University of Connecticut who heckled conservative columnist Ann Coulter.

The center, based in Charlottesville, Virginia, awards the Muzzles each year to mark the April 13 birthday of Thomas Jefferson, the third president and a First Amendment advocate.

As in the past, this year's winners reflect concern about "the overextension of government authority into areas that clearly affect our lives, and chill and inhibit our ability to express views," center director Robert M. O'Neil said.

Since the *New York Times* disclosed the surveillance program's existence in December, it has become the target of harsh criticism, several lawsuits and a congressional investigation. John W. Dean, who was Richard Nixon's White House counsel, remarked that the domestic spying exceeds the wrongdoing that toppled his former boss.

In the Google case, the Justice Department demanded search records to buttress its defense of a law aimed at protecting children from Internet pornography. Google resisted turning over any information because of user privacy and trade secret concerns. Other Internet providers—including AOL, Yahoo and MSN—complied with the government's demand.

Google appears to be the only one that drew a line in the sand," O'Neil said. "We commend their insistence that aggregate data could end up identifying a particular subscriber."

The Department of Homeland Security won its Muzzle for taking air marshal Frank Terreri off flight duty after he e-mailed colleagues expressing concerns about air-security risks. The federal policy curbing such activity was modified, and Terreri was allowed back on duty. But he sued, contending the department's rules still restrict employees' right to free speech.

In Yelm, the city council banned discussion of a plan by Wal-Mart to build a super center after many opponents sought to express their views. When that didn't squelch opposition, the council voted in June to prohibit citizens from using the terms "Wal-Mart" or "big-box stores" at public meetings.

Hecklers at the University of Connecticut earned a Muzzle for drowning out Coulter's speech in December. People have a right to express their disagreement with a speaker, the free-expression center said, but preventing fellow audience members from hearing the message is contrary to the First Amendment's spirit. □

READ BANNED BOOKS

Playboy Foundation announces winners of 2006 Hugh M. Hefner First Amendment Awards

The Playboy Foundation recognized winners of the 2006 Hugh M. Hefner First Amendment Awards May 11 during a luncheon presentation in New York. Eight individuals were honored for their personal achievements in defending the First Amendment, and each received a $5000 honorarium and a specially designed crystal plaque commemorating his or her individual achievements. Margaret Carlson, Washington editor of *The Week* magazine and columnist for Bloomberg News, served as mistress of ceremonies.

Established in 1979 by Playboy Enterprises, Inc.'s, now-Chairman and CEO Christie Hefner, the awards program honors individuals who have made significant contributions to protect and enhance First Amendment rights of Americans. Since its inception, more than one hundred individuals including high school students, lawyers, journalists and educators have been honored with a Hugh M. Hefner First Amendment Award. The awards are given in areas including print and broadcast journalism, education, book publishing, arts and entertainment, government and law.

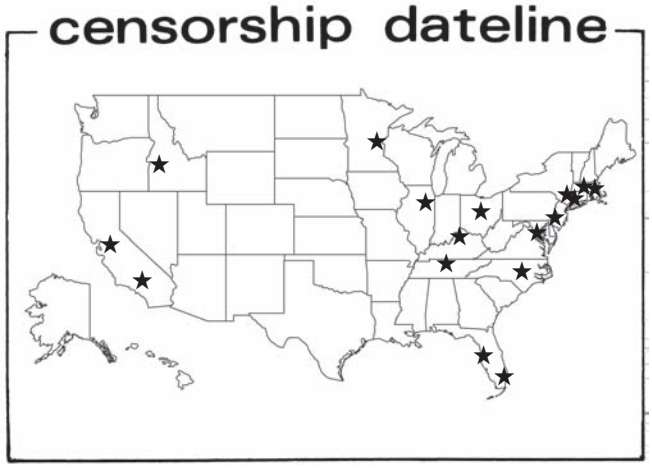
"I am delighted to add eight more names to the impressive roster of Hugh M. Hefner First Amendment Award winners," said Hefner. "A principal guarantee of freedom is the First Amendment. Now, more than ever, it is important that we honor the men and women who are on the front lines protecting that freedom."

The 2006 winners are:

- Paisley Dodds (Print Journalism): An Associated Press reporter who reported on the activities at the U.S. military detention facility in Guantanamo Bay, Cuba, and under the Freedom of Information Act, sued for the release of thousands of pages of tribunal transcripts, which revealed numerous complaints about prisoner abuse.
- Patricia Princehouse, Ph.D. (Education): The leader of Ohio Citizens for Science who, seeing a profound and rising challenge to the separation of church and state in American schools, organized a successful coalition to preserve science education in Ohio's public schools.
- Geoffrey R. Stone (Book Publishing): A law professor at the University of Chicago Law School who wrote *Perilous Times: Free Speech in Wartime from the Sedition Act of 1798 to the War on Terrorism*. The book sounds a clarion call for robust protection of First Amendment freedoms, especially in times of national crisis.
- Jack Spadaro (Government): The director of the National Mine Safety and Health Academy who put his life on the line when he blew the whistle on irresponsible mining practices, corporate collusion, and government cover-up in the wake of an environmental mining disaster.
- Shelby Knox (Arts and Entertainment): A student and subject of the film *The Education of Shelby Knox* who challenged abstinence-only sex education and alarmist misinformation in her Lubbock, Texas high school and fought for medically accurate sexuality education and lesbian and gay rights.
- Marion Lipschutz & Rose Rosenblatt (Arts and Entertainment): The producers/directors of *The Education of Shelby Knox* who exposed the consequences of abridging students' right to learn through abstinence-only education that prohibits teachers from giving comprehensive, medically accurate sexuality education.
- Rhett Jackson (Lifetime Achievement): The former president of the American Booksellers Association (ABA) and owner of The Happy Bookseller who has committed his life to the First Amendment and social justice with indefatigable dedication to the free exchange of ideas and the proposition that the printed word should be available to all.

Winners were selected by an independent panel of judges, including Katrina vanden Heuvel, editor and publisher of *The Nation*; Anthony D. Romero, executive director of the American Civil Liberties Union (ACLU); and Eugenie Scott, Ph.D., executive director of the National Center for Science Education and 1999 Hugh M. Hefner First Amendment Award winner.

Past winners have included Nicholas Becker, for challenging the constitutionality of a student-led prayer during his high school graduation ceremony; Bill Maher, as host of *Politically Incorrect*, for speaking out at a time when Americans were encouraged to abandon the Bill of Rights in exchange for the false comfort of "national security"; Mary Dana and Nancy Zennie, co-founders of "Muggles for Harry Potter," a group of students, parents and teachers who successfully rallied to oppose a Michigan school superintendent's decision to ban the Harry Potter books from Zeeland Public Schools' curricula; Dr. Frederic Whitehurst, former supervisory agent and forensic chemist for the Federal Bureau of Investigation (FBI), who blew the whistle on fraud and scientific misconduct in the FBI crime lab; Trina Magi and Linda Ramsdell, for organizing a grassroots campaign to eliminate Section 215 of the USA PATRIOT Act, which undermines Americans' right to read and access information without governmental intrusion or interference; and Kelli Peterson, who formed the Gay-Straight Alliance, defended its right to convene on the campus of Salt Lake City's East High School, and inspired similar programs in twenty-five states. ☐



libraries

Turlock, California

Stanislaus County Library patrons can read any of ten books on belly dancing, from techniques to costumes. They also can check out a DVD on belly dancing as an exercise. But they can't attend a belly dancing program at the library anymore.

Stanislaus County Chief Executive Officer Rick Robinson canceled the program, which was scheduled for April 22.

"The issue is what is appropriate for a library and what is not appropriate," Robinson said. Robinson saw the event scheduled on the library calendar and questioned it. "Does it support some form of educational opportunity, or is it just pure entertainment?" Robinson asked. "I couldn't answer that to my satisfaction, and I couldn't answer it to my board."

Chris Wilde, who runs Yasmin's Navel Academy in Turlock, said she was "stunned" when she was told that her contract had not been approved by the library. She was not given a reason, Wilde said. The contract for the program was for $250 for one class, according to Vanessa Czopek, Stanislaus County librarian.

Wilde, fifty-six, said she has given the class, which she described as Middle Eastern ethnic folk dance, at the Patterson, Turlock and Modesto libraries since last summer. The class lasts about two hours—ninety minutes of discussion and a half-hour demonstration. Wilde said she initially was hired as part of a program to bring teenagers into the library for cultural activities.

The programs drew a dozen to two dozen people, Wilde said.

The program touches on the cultural background of the dances, what the movements mean, how belly dancing evolved, the music and costumes, Wilde said. The dances have roots in India, Eastern Europe and North Africa as well as the Middle East, she said. Belly dancing dates back at least five thousand years, said Wilde, who dances under the name Yasmin. Until the 1500s, the dances were performed by women for women, she said.

"Westerners by and large misunderstand it," Wilde said. "It is not a dance of seduction."

Wilde's Desert Wind Dancers troupe, which has ten women, performs at Modesto's International Heritage Festival and other cultural and art venues. She also has performed at many Assyrian parties in the area. "It's a part of the culture; you can't have a wedding without one," she said of the Assyrian performances.

Robinson said the cultural aspect of the dance was not mentioned in the library listing.

"I'm not sure what it is he's thinking," said Wilde, who is a science teacher at Central Catholic High School in Modesto.

Robinson has asked the library to postpone scheduled activities without "a direct nexus to library activities." The April library calendar lists a number of poetry, computer and crafts programs, as well as several estate-planning seminars.

The belly dancing cancellation wasn't the first controversy over library programming. Irma Slage, a Livermore psychic, contended several months ago that the Stanislaus County Library was refusing to allow her to present her program. Slage drew publicity last summer when her program—which consists of a talk and question-and-answer session about psychic experiences she has had—was canceled by the Ripon Library after Mayor Chuck Winn threatened to withdraw library funding. He said he thought the program went against the community's Christian roots.

Slage later was allowed to appear at the Ripon Library but claimed she was being blocked by the Stanislaus library. Stanislaus library officials said then the problem was one of scheduling rather than censorship.

Robinson said he would sit down with Czopek this spring to develop criteria for tax-supported library programs. Reported in: *Modesto Bee*, April 16.

Victorville, California

Prompted by a request from a Victorville parent to consider the appropriateness of Paul Gravett's *Manga: 60 Years of Japanese Comics*, the San Bernardino County Library decided to remove thirteen copies from all its branches April 12.

SBCL Director Ed Kieczykowski said that "99 percent of the book is perfectly okay, but there are a couple of pretty graphic scenes, especially one showing sex with a big hamster, that are not especially endearing to our community standards." He said that after seeing those pages, it was hard to defend keeping the book on open shelves, adding that it was a "telling fact that only twenty public library systems in the state owned the title" despite getting very positive reviews.

Victorville resident Cynthia Jones had written to the library and the county supervisor's office in early April requesting the title be removed after her 16-year-old son checked it out. "I like Japanese cartoons," Matt Jones said, "but I did not expect to see those images and I returned the book the next day."

Kieczykowski said that the library brought County District Supervisor Bill Postmus in and made him a part of the review process. "It was a real educational experience for him on the mechanics of reconsidering a book," he said. "We took him through the challenge request, we showed him the book reviews, showed him the book, and made him a part of the entire process."

Kieczykowski added that adult patrons who want to read the book would have convenient access through interlibrary loan from the neighboring Riverside County system. Reported in: *American Libraries* online, April 14.

Brooksville, Florida

She's got only one novel to her credit. But author Maryrose Wood may soon join a select club. On May 16, the Hernando County School Board decided her first book—*Sex Kittens and Horn Dawgs Fall in Love*—might not be appropriate for high school readers, and removed it and nine other books from a $73,000 library order until a committee can review them.

Among the other books culled from Nature Coast Technical High School's order were Barbara Kingsolver's first novel, *The Bean Trees*; *The Clan of the Cave Bear*, by Jean Auel; *Boy's Life*, by Robert McCammon; and the abridged young-adult version of *The Power of One,* by Bryce Courtenay.

Board member Sandra Nicholson led the charge against those books during the board's televised regular meeting, reading profanity-laced passages from what she said was McCammon's novel and castigating the school officials who placed the order. "We have teachers who complain constantly about the language students use," Nicholson said. "And then we tell them to read these books, these wonderful books that come highly recommended. What kind of message are we sending to these students?"

Media specialist Mary Dysart said the 2,500-book order from Mackin Library Media was typical of district library purchases. Librarians must rely on reviews by publications like *School Library Journal* and *Booklist*, she said.

Nicholson said she had been approached by people from a local radio station who expressed concern about the district's book orders, and took the initiative to compare Nature Coast's order against lists on two Web sites devoted to challenging the propriety of books in school libraries. "I went to two sources," she added. "I wasn't able to find Sex Kittens and Horn Dawgs Fall in Love."

A reviewer for *School Library Journal* described Wood's novel as a "lightweight foray" into the love life of a fourteen-year old girl at a Manhattan school, and deemed it appropriate for readers in grades six through nine. "While the title might make some adults cringe, in fact the story is nearly squeaky clean and lots of good fun with a predictable but happy ending," wrote Susan Riley of the Mount Kisco Public Library in New York.

Wood said her book is on the shelves "from Anchorage, Alaska, to the U.S. Air Base in Germany and most states in between," and to her knowledge has never been banned. "Teens have the right to read, to think, to learn, to have access to information and to form their own opinions and values," she added. "Teens need to be treated with respect so that they can become intellectually and emotionally prepared for the responsibilities of adulthood and citizenship. I don't agree with adults who think that "mature' books should be kept out of the hands of young people who are themselves within a stone's throw of adulthood."

Another book, *Unspeakable Acts, Unnatural Practices: Flaws and Fallacies in Scientific Reading Instruction*, by Frank Smith, narrowly avoided being included on Nicholson's list of profane books. But Nature Coast principal Margaret Schoelles begged the board not to remove it, saying she had ordered it as a professional development resource for her teachers.

Some board members expressed discomfort at the prospect of being seen as book banners. "You make the individual choice as a person on the movies you see, the books you read, the music you listen to," board chairman Jim Malcolm said. "We're dealing with adolescents through the guidance of their families, and with the professional staff that we have, on what's appropriate or inappropriate reading material. And I think that's where the decision lies."

But the board ultimately voted 5–0 to ask superintendent Wendy Tellone to form a committee to review the books and make a recommendation on whether to buy them. If the board eventually bans any of the titles, they'll join a growing list of books that have been removed—at least temporarily—from district libraries in recent years.

Among those challenged books are Judy Blume's *Deenie*; Pulitzer Prize-winning poet Maya Angelou's autobiography *I Know Why the Caged Bird Sings*; and *Freaky Friday*, by Mary Rodgers, which inspired a PG-rated Disney film.

Other books the school system wants to have reviewed are: *Are You in the House Alone*?; *Rainbow Boys*; *Rats Saw God*; and *The King Must Die*. Reported in: *St. Petersburg Times*, May 20.

Nampa, Idaho

The Nampa Public Library is taking heat about certain books they have available for check out. A group of concerned citizens took their message to the Nampa City Council May 15. They want eight books pulled off the shelves. Their argument is that each of these books have graphic sexual material, but one book in particular, *The Joy of Gay Sex*, crosses the line.

"Not only can anyone with a library card check this book out, but where it was found was on the third shelf where any eight-year-old could access it and see it," said Bryan Fischer, Executive Director of Idaho Values Alliance.

And that's exactly how word of this book got out. A fifteen-year-old boy found it lying on a library table and told his mom, who told someone, who told someone else, and eventually that story got to Randy Jackson, a father of two. He didn't believe it at first and went to check it out for himself. He couldn't believe what he saw.

"One of the chapters is titled daddy-son sexual fantasies about two people having sex together and pretending they are father and son," said Jackson.

"To put literature in the hands of teenagers that encourages them to go online and hookup online for gay sex with strangers is totally inexcusable," said Fischer.

The group also demanded the removal of seven other books, including *The Joy of Sex*. "They are very pornographic in nature and they have very explicit and detailed illustrations and photographs which we feel doesn't belong in a library," said Jackson.

However, some people believe the library is for the public and taking books off the shelves is a form of censorship. "I don't think it's right," said Linde Casper, a library user, "I think a library is an open place and that there is information that anyone can look at, check out and if they don't want to look at it they don't have to open the book. Leave it alone."

"This isn't a matter of censorship," said Fischer. "They can go on Amazon.com and you can buy it for a $1.99 online, so it is not like it will keep it out of the hands of people who really want to get their hands on it."

Library officials responded with a statement: "Not all materials in a public library collection will be suitable for all members of the community. Each person is free to choose (or reject) for themselves and their children the items at the library that meet their needs. When we select materials for the collection, we try to provide a wide range of opinion, ideas and information to meet the diverse needs of our community." Reported in: fox12Idaho.com, May 24.

schools

New Milford, Connecticut

Peter and Wendy O'Brien want a children's story about the World War II Japanese-American internment removed from the second-grade reading list because of a racial slur contained within its pages. The O'Briens' objection to the award-winning book, *Baseball Saved Us*, by Ken Mochizuki, which has been on the district's reading list for a decade, is the word "Jap" is used to taunt the main character in the book.

They do not argue with the values taught in the story, which is oriented around the realities of that period in U.S. history when Japanese-Americans were treated with prejudice. They simply do not believe it is appropriate for second graders to read a racial slur as a means to teach tolerance.

"I was kind of shocked," O'Brien told Assistant Schools Superintendent Thomas Mulvihill and school board Committee on Learning Chairman William McLachlan. "I don't think it is necessary to bring up a racial slur in second grade."

He said his objective was to remove this book from the second-grade reading list, but not from all library shelves. If the board does not agree with that step, he would then want to assure his younger son not be exposed to the book. School system policy allows parents to make such individual requests to teachers and administrators.

McLachlan said he appreciated the O'Briens' viewpoint based on the author's choice of words, but after reading the book and the reviews could also appreciate why teachers would endorse its use in the classroom.

The O'Briens first complained about the book in a letter to Mulvihill. His complaint prompted the creation of the district's first citizen request form for reconsideration of a book on the school system's approved reading list. In the letter, O'Brien said he could not imagine that the best way to teach a child not to use ethnic slurs, especially in a school setting, is to recite them and then tell the child they should not be repeated. He argued that this book might be more suitably linked with a history curriculum in the older grades.

"Any ethnic slur should not be introduced at the elementary level, period," O'Brien wrote. "There is simply no need for it."

On the form the O'Briens filled out to voice their objections to this book, they suggested that a better choice to teach children at that grade level about overcoming adversity would be a book on Helen Keller.

Northville School Librarian Irene Kwidzinski was asked to collect both professional reviews and reviews of elementary readers. Those all gave strong accolades for the book that is illustrated in dark colors as symbolic to this dark period in American history, a response to war that erroneously targeted Japanese-Americans by forcing them to leave their homes to live in military camps. Even the children reviewers praise the use of the popular sport of baseball to highlight the pain of prejudice.

"We recommend this book to people who like baseball and tolerance," three children reviewers wrote.

"It's a learning opportunity," Kwidzinski said of the book that is available in the library and for classroom use.

"Students learn about tolerance and diversity and how not to repeat history. That's the value of books like that. You want them to think critically. It is a book of its time," Kwidzinski said. "It reflects what society thought at that time."

As a factual account of how Japanese-Americans were treated, Kwidzinski said a classroom discussion, or if it is read at home with parents, can talk about why this was wrong and how certain words and language can be used to hurt people. "You have to handle it with sensitivity and guidance," Kwidzinski said, noting that similar objections have been raised to literary classic *Huckleberry Finn* and its depiction of black Americans. Reported in: *New Milford News-Times*, May 25.

West Hartford, Connecticut

The Chocolate War, by Robert Cormier, is number one on the list of books Rick and Donna Stockwell, parents of a King Philip Middle School eighth-grader, don't want their son reading. They think the language, sexual content, and violence make the book PG-13. They want West Hartford schools to require a release form for books as they do for films.

"My concern is not so much about this one book," Rick Stockwell said. "It's more about a policy of having students read PG-13 or R-rated material without my permission or consent. Read the book; it's either PG-13 or R-rated."

This story started last fall when Donna Stockwell found out Jessica Kerelejza's language arts class would read the novel. Stockwell had heard that in the past students needed a permission slip to read it so she decided to find out why by reading it. She then told her husband, "You have to read this book because I can't believe they're requiring the kids to read this."

Rick Stockwell read it next and agreed with his wife. "I just thought to myself, 'do I really want this material going into my son's mind and later on into my daughter's mind,' and I was offended by it," Stockwell said.

Donna Stockwell called Kerelejza, asking if the class could read another book. Kerelejza has taught *The Chocolate War* at least three times and developed classroom activities and writing assignments for the novel. While the Stockwells said she was kind, Kerelejza also wasn't changing the assignment. As is standard when parents object to a book, Kerelejza said their son could read another novel.

The Stockwells next talked with Kerry Meehan, English Department supervisor for Hall High, King Philip, and Bristow Middle School. He's the man responsible for choosing curriculum to help students be better readers, communicators, and thinkers. He's used to books being challenged; parents have even protested the Bible. But to Meehan, *The Chocolate War's* coming-of-age theme is important for eighth-graders.

"It's an outstanding young adult novel," said Meehan, who's read and taught it many times. He said it's recommended by the National Council of Teachers of English for both middle and high schools.

"It's probably one of the best Young Adult novels that's been written," he said.

Meehan addressed the Stockwells' concerns in an October 19 e-mail, offering an alternative novel for their son and defending *The Chocolate War* for its themes and good writing. The Stockwells responded to his e-mail saying they felt the book was inappropriate for eighth-graders and adding that if West Hartford had a policy requiring release forms for R-rated and PG-13 films, why not something similar for books?

The Stockwells put those same thoughts in an October 27 letter to King Philip Principal Mary Hourdequin, stating they felt the book equaled an R-rated movie. They asked that students required to read it have written parental permission. They listed nearly two pages of R-rated language, R-rated sexually explicit content, and examples of extreme violence.

After a meeting with Hourdequin, the Stockwells left with an educational materials inquiry about the book, which they sent to Dr. Karen List, assistant superintendent for curriculum and instruction for the entire school district, almost ten thousand West Hartford students. List sends these inquiries to a committee of West Hartford educators, including the director of library services, for their evaluation.

"My decisions are based on the thoughtful decisions of the people with the greatest expertise in the content area," said List. List also read the novel and said she didn't find it offensive in light of what kids hear and see today. She respects the Stockwells' concern but like Meehan, considers the book relevant for middle-schoolers. List gave the committee's verdict in a November 28 letter to the Stockwells: *The Chocolate War* should stay in the eighth-grade curriculum. The committee noted it had won the Lewis Carroll Shelf Award, introduced students to qualities of good literature, and had an important anti-bullying theme. List also told the Stockwells a review of English/Language Arts curriculum would look at their concern.

On December 6, the Stockwells went to the school board with a letter to Chairman Jack Darcey, asking the book be removed from the King Philip curriculum and repeated their request for parental permission with books they believe are PG-13 or R-rated. Darcey read *The Chocolate War*. He didn't like the book's language but thinks the author wanted to make the message real to his readers. In a March 10 letter to the Stockwells, he explained why the board chose to take no action on the Stockwells' requests.

"The basic concept here is the board does not really get involved in all of our textbooks and reading materials because we really don't have the expertise to make judgments," Darcey said. The letter from Darcey seemed to shut doors, as did one last meeting with Hourdequin

"I felt [at] this point I had exhausted all our options and felt an obligation to let the parents of the King Philip

eighth-graders know what type of material their children were reading," Rick Stockwell said. "I was sure that none of them had the time to read the books." He went through the school directory and for two nights hand addressed nearly 375 envelopes to all eighth-grade parents; his wife made copies of the four-page letter packet at Staples. A few other parents, Donna Stockwell's mom, and the Stockwells' daughter, helped stuff the envelopes. Stockwell estimates the entire mailing cost nearly four hundred dollars. They had to rush it, because the novel they thought would go to students in May, was handed out in April.

They had ten responses to the letters, about 80 percent favorable, one neutral, and one against. They also had another meeting with Meehan, Mary Hourdequin, and several other King Philip mothers who expressed concern about their children reading *The Chocolate War*. The Stockwells' son is not one of them; he's reading *The Outsiders*, by S. E. Hinton.

The Stockwells insist they aren't trying to impose a book list on other students; they just want books appropriate for the age group.

"We're proposing that parents be allowed to make informed decisions about what is best for their children," he said. His solution is a committee of administration, faculty, and parents making choices on controversial books.

"It's not going to be easy, but they have to develop some kind of standards in terms of profanity, sexual content, and violence," Stockwell said. Once a policy is developed, he thinks the curriculum committee would measure books selected against the new policy. He thinks books like *The Chocolate War* need that kind of rating; he doesn't accept the offensive language as necessary to the theme.

"Some people think they're hearing it on MTV, they're hearing it at school," Stockwell said. "The schools should be a place where we raise the bar a higher standard; we shouldn't be dumbing down our curriculum to mesh with pop culture." Reported in: *West Hartford News*, May 18.

Coral Springs, Florida

A ten-year-old Coral Springs girl wasn't allowed to sing a controversial President Bush-bashing ballad at her school talent show after her principal deemed it inappropriate and too political. The song, "Dear Mr. President," performed and co-written by the singer Pink, criticizes the president for the war in Iraq and other policies, including his stance on gay rights.

Parent Nancy Shoul said her daughter Molly should be lauded for choosing lyrics that are full of substance rather than pop music fluff. She said the principal's ban sends a bad message and violates her daughter's right to free speech.

"If this was a student singing a pro-administration song, no one would quibble with it," Shoul said. "The principal is just running scared and doesn't want to upset any parents."

The principal of Park Springs Elementary, Camille Pontillo, explained that the song Molly "chose to sing is a political song and does use the word hell in it." A Broward County School District official said the principal has every right to determine what music her students should hear at a school function.

"This is a fifth-grade student that wants to perform a song filled with lyrics about drug use, war, abortion, gay rights and profanity," said district spokeswoman Nadine Drew. "This is an elementary school that includes kindergarteners and pre-K students."

The song does not mention abortion, and the profanity mentioned is the word "hell." The drug use refers to Bush's alleged conduct before he became president.

Some of the lyrics read:

> What kind of father would take his own daughter's rights away
>
> And what kind of father might hate his own daughter if she were gay
>
> I can only imagine what the first lady has to say
>
> You've come a long way from whiskey and cocaine

Another portion criticizes Bush for the war:

> How do you sleep while the rest of us cry
>
> How do you dream when a mother has no chance to say goodbye

Molly said she thought the song was "really cool" because it spoke about important subjects like war and homelessness. She said she liked the way the song addressed the president directly. "He should try to listen to what other people say, not just himself," she said.

The decision to pull the song came about a year after the School Board decided to allow a high school student to wear a T-shirt with the face of President Bush and the phrase "International Terrorist." Initially, the Nova High School student was told he would be suspended if he did not remove the shirt, but later the American Civil Liberties Union threatened to sue and the board changed its dress code rules, removing the word "offensive" from the description of prohibited clothing. "Students have a right to give their opinions and points of view," says the free speech section of the Student Code of Conduct. Principals may censor, it states, only if the material is obscene, slanderous, likely to disrupt, profane or sells a commercial product.

Howard Simon, executive director of the American Civil Liberties Union of Florida, disagreed with Pontillo's decision. He expected the school to reverse course after checking the law. "It's as if the principal's worst nightmare is for intellectual debate and controversy to break out in a classroom," Simon said.

Nancy Shoul, a teacher of Spanish at Coconut Creek High and a veteran of more than two decades in Broward

public schools, said there would probably be no issue if her daughter wanted to sing the song in middle or high school.

Assuming the decision stands, Molly said she plans to select a new song for the show with a message she thinks school officials wouldn't object to: A hip-hop song about two girls fighting over a boy. Reported in: *Florida Sun-Sentinel*, May 5.

Plainfield, Illinois

A seventeen-year-old high school student who posted comments online about Plainfield School District 202 is facing expulsion because of his blog, his attorney, Carl Buck, said. After serving a ten-day suspension over his posting on Xanga.com, the teen was back in school but could be expelled and sent to an alternative school, Buck said.

"They are trying to terminate his educational rights," he said. "Neither the parents, student or I believe this warrants expulsion. This seems pretty aggressive for the kind of [posting] we are talking about here."

The student was suspended from school after posting a letter online criticizing the discipline of another student, Buck said. He also posted a letter to school administrators saying his opinions were being stifled and that he was being bullied into removing information on his blog.

"Did you ever stop to think that maybe now you really are going to have a threat on your hands now that you have just [ticked] off kids for voicing their opinions?" one of his postings read. "The kids at Columbine did what [they] did because they were bullied."

While he was suspended, the student's parents received a letter saying the school district is considering expelling him, Buck said.

Buck said the threatened discipline is unfair because the student posted his opinions on a social-networking Web site not accessible on school computers. Plus, he never named an administrator or threatened any violent action. "We are talking about personal activity here," Buck said. "What is done off campus is his right."

In a written statement, officials said they don't monitor student Web sites or look up postings unless they create a disturbance at school. "When a posting creates a disturbance to the educational environment or threatens the safety and security of students or staff members, it is the responsibility of the school district to look into the matter," the statement said.

"The district respects the First Amendment rights of our students, but not all words can be categorized as protected speech."

In recent months across the region, school administrators have struggled to figure out how to regulate students' online postings at sites such as MySpace.com. In Plainfield, the school district evaluates each case before taking disciplinary action, its statement said.

In this case, the student's mother believed his initial suspension was unfair and violated his freedom of speech, Buck said. After contacting the American Civil Liberties Union, she was referred to Buck to handle the case, he said. Reported in: *Chicago Tribune*, May 24.

Lexington, Massachusetts

In a controversy with a familiar ring, parents of a Lexington second-grader protested that their son's teacher read a fairy tale about gay marriage to the class without warning parents first. The teacher at Joseph Estabrook Elementary School used the children's book, *King & King*, as part of a lesson about different types of weddings. A prince marries another prince instead of a princess in the book, which was on the American Library Association's list of the ten most challenged books in 2004 because of its homosexual theme.

"My son is only seven years old," said Lexington parent Robin Wirthlin, who complained to the school system in March. "By presenting this kind of issue at such a young age, they're trying to indoctrinate our children. They're intentionally presenting this as a norm, and it's not a value that our family supports."

She complained more than a year after Lexington parent David Parker was arrested for trespassing, because he refused to leave the Estabrook school grounds until administrators allowed him to opt his son out of discussions about families with same-sex parents. The latest incident has renewed the efforts of Waltham-based Parents' Rights Coalition to rid the state's schools of books and lessons that relate to homosexuality, and led the school system to reemphasize its stance on teaching about gay marriage and related issues as part of larger lessons on diversity and tolerance.

Lexington Superintendent of Schools Paul Ash said Estabrook has no legal obligation to notify parents about the book. "We couldn't run a public school system if every parent who feels some topic is objectionable to them for moral or religious reasons decides their child should be removed," he said. "Lexington is committed to teaching children about the world they live in, and in Massachusetts same-sex marriage is legal."

Ash, who became superintendent this school year, wrote a memo to parents in September defending the system's philosophy of teaching diversity. His memo, which clarified the state's parental notification law, stemmed from the controversy with Parker. Schools are required to notify parents of lessons on sex education and give them the right to opt out, but in Lexington, sex education doesn't begin until fifth grade, Ash said.

Parker had objected to a "diversity book bag" that his son brought home from kindergarten. The bag included *Who's in a Family*?, a book that depicted same-sex couples along with other types of families.

In *King & King*, two princes kiss at the end of the book, which was first published in the Netherlands then translated

into English and published by the Berkeley, Calif.-based Tricycle Press in 2002. The bookwas written for children ages 6 and older, the publisher said. Tricycle Press also published *Who's in a Family*?

"Tricycle Press is proud to have published *King & King*," said Laura Mancuso, the company's marketing and publicity manager. "It features an unconditional love that ignores conventional boundaries. There are many kinds of families in this country, and the children in these families and their friends deserve to see their situations in a positive light."

Mancuso said the publisher first received complaints about the book in 2004 when a North Carolina couple objected to their first-grade daughter bringing it home from the school library. Last year, an Oklahoma legislator used the book as an example of why children's library collections should have new restrictions. The Lexington teacher borrowed the book from the school library.

The two protests in Lexington illustrate the need for a broader parental notification law in the state, said Brian Camenker, president of the Parents' Rights Coalition. Camenker provided the language for a 1996 Massachusetts law that requires schools to notify parents of lessons on sex education and is pushing for the addition of sexual orientation to the topics requiring notification.

The pending bill would also require all parents to sign forms allowing their children to participate in such lessons instead of asking those who are offended to opt out, said Camenker, a Newton parent whose group is fighting same-sex marriage and opposes what it calls the "homosexual agenda" in public schools. The Wirthins contacted his group for help in dealing with Lexington schools. Reported in: *Boston Globe*, April 20.

Raleigh, North Carolina

A local Christian activist group and several parents urged Wake County school leaders April 18 to stop requiring students to read four books they say have vulgar and sexually explicit language. Called2Action and the parents objected to *Beloved* by Toni Morrison, *The Color Purple* by Alice Walker, and *The Chocolate War* by Robert Cormier. They argued that some of the language in these books is not appropriate for middle school and high school students.

None of the books are on the school district's required reading lists. But English teachers at individual schools can and do make their students read some of those questioned works. For instance, *The Chocolate War* made the state's list of the most read books in English classes in a 2002 survey by the North Carolina Department of Public Instruction.

The parents are also forming a "Parents Council on Literary Discretion" to review individual school reading lists to look for other books they may find questionable. The parents are getting help from Called2Action, a Christian group that says its mission is to "promote and defend our shared family and social values."

Patti Head, chairwoman of the school board, met with those parents and said the board and school administrators will take their concerns under advisement.

All three of the books targeted by the local parents made the American Library Association's list of 100 most challenged books in the 1990s. *The Chocolate War*, which deals with issues such as homosexuality and masturbation, also made the association's list of ten most challenged books for 2005.

Under Wake school district policy, any parent or student can object to reading a book. That person would then be given an alternative book to read, according to Bill Poston, a school district spokesman. Reported in: *Raleigh News & Observer*, April 18.

student press

Minneapolis, Minnesota

North Central University removed a husband and wife from their editorial posts at a student newspaper after they refused to allow administrators to vet the paper before publication. Hope and Chuck Bahr, students at North Central, a Pentecostal institution in Minneapolis, were dismissed as editors in April after the seven-member senior editorial staff of *The Northern Light* voted unanimously to stop working on the newspaper—rather than give administrators pre-publication editorial power.

Hope Bahr was the editor-in-chief of the paper, which generally publishes every other week, and Chuck Bahr was the news editor.

Susan Detlefsen, a North Central spokeswoman, said that the decision to require pre-publication review was the result of "an accumulation of events." Gordon Anderson, president of the university, cited two main problems with *The Light's* coverage. The first, he said, arose when Chuck Bahr chose to write a news article about the Soulforce Equality Ride, a thirty-member tour of nineteen Christian and military campuses that have anti-gay policies.

The riders, all between the ages of eighteen and twenty-six and identifying themselves as lesbian, gay, bisexual or transgender, planned to stop at North Central on April 17. One of the riders said he was expelled from North Central because he is gay. The North Central administration, which views the campus visits as publicity stunts, told the riders that they would not be allowed to conduct their activities on campus grounds. North Central says it takes a Biblical view of homosexuality, but, according to a university statement, "does not summarily expel students who reveal that they have same sex attraction. Also, we do not tolerate 'gay-bashing.'"

The ride has been a point of hot debate at many of the institutions it has visited, and Bahr felt it worthy of an article.

Because of privacy considerations, university officials could not comment specifically on the student who said he was expelled, but Anderson said that Chuck Bahr and the student, David Coleman, are friends. Anderson added that, because Chuck Bahr is married to the editor-in-chief, there was little chance there would be editorial oversight of the article. "It's an obvious conflict of interest," Anderson said.

When Bahr wrote about Equality Ride in January, university officials literally stopped the presses. "The administration said they weren't ready to make a statement," Hope Bahr said, "so we didn't think it was fair that we should hold our story because they weren't ready." University officials called the printing press and halted publication.

After that, Chuck Bahr "gave in," he said, and allowed Detlefsen to read his article about the Equality Ride for the February 28 issue before it went to press. Detlefsen said that the intent of "proofreading" is to ensure "a balanced perspective." Bahr said Coleman is a friend so he purposely did not use Coleman as a source. Detlefsen reviewed Bahr's article, deemed it fair, and did not make any changes to the piece, in which both she and a main Equality Ride organizer are quoted extensively.

In the same issue, the editorial board, made up of the Bahrs and three other editors, wrote an editorial admonishing the administration for not showing "Christ-like love" by letting the riders on campus to converse with students.

To cap off the trio of articles that Anderson said has left his desk full of unhappy letters from donors and "the highest officials in our movement," the *Light* ran a student opinion article that questioned the Pentecostal doctrine of "speaking in tongues." Anderson called the article a "pot shot" and "a setback in [North Central's] public image" that could devastate fund raising.

Anderson pointed out that, because the university owns the newspaper and both are private entities, there is no First Amendment question in this case. The Bahrs admit the university is on firm legal ground, but Hope Bahr said, "we believe under Biblical principles we are allowed to question their decisions." Student reaction, she added, has largely been apathetic. Most students "believe that the administration are our spiritual leaders and we should listen to them."

When asked whether a solution short of removal was attempted to alleviate conflict of interest concerns, Anderson said that "they never volunteered that."

Rather than a legal issue, the question, to Anderson and the Bahrs is what role the student newspaper should play. North Central policy says that "the opinion section is a venue where students should be free to express their opinions on matters that concern them. This includes columns or commentaries that advocate change in university policy or practice."

Anderson said that, as members of a private institutional community, the paper has an obligation to act in the interest of the community. He said mainstream newspapers would not publish articles criticizing the company that owns them. Anderson said the role of the paper came down to a philosophical debate with students, and "in a philosophical debate with students," he said, "you can get a lot of attitude." He added that to be a true open forum, the paper should run opposing opinion articles in the same issue, rather than printing one, and allowing a response three weeks down the line.

Mark Goodman, executive director of the Student Press Law Center, said, even without grounds for a legal complaint, the administration's behavior is "reprehensible for an institution of higher education. If school officials are looking to prepare journalists for life in China, this is a great way to run a student newspaper." Reported in: inside highered.com, April 11.

colleges and universities

Highland Heights, Kentucky

Northern Kentucky University has suspended a tenured literature professor, immediately removing her from teaching four courses, because of her role in the destruction of an anti-abortion display on campus.

Sally Jacobsen was in her last semester before retirement when she decided to take a stand against a large display of crosses and a sign that said "Cemetery of the Innocents." The display has been set up by a new anti-abortion student group, responding to the creation of a faculty group at Northern Kentucky that backed abortion rights.

Jacobsen said she had invited students in one of her courses "to express their freedom-of-speech rights to destroy the display if they wished to." Jacobsen called the display a "slap in the face" to women contemplating abortion. Later, she apparently changed her view about the situation, and apologized in an interview with a local television station. "I deeply regret my impulsive action," Jacobsen said, adding that she wanted the university "to be able to defuse the firestorm of attention around this."

The student newspaper at Northern Kentucky, *The Northerner*, shot photographs of her in what appeared to be an active role taking down a sign that was part of the display. After those photographs appeared, anti-abortion groups had a field day—and the university had considerable discussion about free speech and dissent. Faculty leaders—including the organizer of a group of professors who favor abortion rights—condemned the vandalizing of the display. And some said that Jacobsen's actions were not only wrong, but hide the reality that it is professors who favor abortion rights who need to guard their words and actions in Kentucky.

In just days, Jacobsen was removed from her courses. She had previously announced plans to retire at the end of

the semester. In a statement, President James C. Votruba said it was important to view Jacobsen in the context of her entire twenty-seven-year career at the university. But he also said that her "lapse of judgment was severe."

Votruba also said he was pleased that many of those who condemned the vandalism disagreed with the point of the display—and he said that this respect for the views of others was in the best spirit of a university. "At their best, universities are not places of comfortable conformity," he said. "They are places where ideas collide as students and faculty search for deeper understandings and perspectives."

The Faculty Senate also issued a statement defending free expression. "Advocating provocative and controversial positions is in the highest tradition of academia," the statement said. But it added: "Those having strong opinions on one side of an issue must recognize that others may have equally strong opinions that are contrary to theirs, and that those hold differing opinions have the same right of expression."

Bill Oliver, a chemistry professor who is president of the Faculty Senate, said that faculty members thought it important to speak out quickly in the wake of the vandalism of the display. "We didn't think it should all fall on the administration's shoulders," he said.

Another group that spoke out was Educators for Reproductive Freedom, a new group of professors who favor abortion rights and sex education that goes beyond the abstinence-only approach favored in the region. It was the creation of this group that prompted the anti-abortion display to be set up, but the abortion-rights supporters strongly back free speech and condemn the vandalism, said Nancy Slonneger Hancock, one of the organizers and an associate professor of philosophy. Hancock added that Jacobsen had never participated in any of the group's events.

Hancock said that part of the damage done by Jacobsen's action was to suggest that free expression is limited for those who oppose abortion. In the part of Kentucky where the university is located, the opposite is true, Hancock said. While she praised the university's president as a strong support of faculty rights to free speech, she said that professors like her who move from other parts of the country quickly learn some hard lessons. When you drive with old Kerry or Gore bumper stickers on your car, she said, other drivers cut you off or shout obscenities. Other members of her group, who moved to town with abortion rights bumper stickers, have had their tires slashed. And when word got out about the faculty group's meetings—to date, just two brown bag lunch sessions—anti-abortion students picketed, thrusting fetus pictures in people's faces.

"It's a very hostile environment," she said. "If anyone's free speech is being stifled, it's not the pro-lifers." While Hancock said she disagreed with Jacobsen's action, she said she agreed that a response was in order to the display of crosses—but one that did not infringe on anyone's freedom of expression. Hancock's group had planned to wait until the display was taken down on schedule, and then to set up an information table with pamphlets on reproductive rights, abortion laws in Kentucky, and other relevant materials. Reported in: insidehighered.com, April 19.

Waltham, Massachusetts

A bulldozer menaces a girl with ebony pigtails, who lies in a pool of blood. A boy with an amputated leg balances on a crutch, in a tent city with a Palestinian flag. A dove, dripping blood, perches against blue barbed wire.

Palestinian teenagers painted those images at the request of an Israeli Jewish student at Brandeis University, who said she wanted to use the art to bring the Palestinian viewpoint to campus. But university officials removed the paintings four days into a two-week exhibition in the Brandeis library.

University officials said the paintings depicted only one side of the Israeli-Palestinian conflict. Lior Halperin, the student who organized the exhibit, said the university censored an alternative view.

Now, Brandeis is embroiled in a debate about how to portray Palestinian perspectives on a campus where 50 percent of the students are Jewish and where passions about the Middle East run deep. Six to a dozen students at the Waltham university complained about the paintings. Reported in: *Boston Globe*, May 3.

Mansfield, Ohio

Like a growing number of colleges, Ohio State University at Mansfield has decided to ask all freshmen to read a common book, in the hope of creating a more unified intellectual experience for new students. But the effort to select a book for the next group of new students hasn't exactly been a unifying experience. The suggestion of one member of the book selection committee that an anti-gay book be picked angered many faculty members, some of whom filed harassment charges against the person who nominated that book. The faculty members in turn are being accused of trying to censor a librarian—and a conservative group is threatening to sue.

Whether the debate at Mansfield is about faculty members standing up for tolerance or displaying intolerance all depends on whom you ask. At the center of the debate is Scott Savage, the head reference librarian at Mansfield. Savage volunteered to serve on the committee that would pick the book for next year's freshmen—the first to participate in the common reading experience program. Donna L. Hight, the chief student affairs officer, led the committee and said she didn't specify any type of book or subject matter, but encouraged committee members to think about books that could relate to many issues and that might inspire a lot of discussion. Much of the committee's work was done via e-mail, and Savage's ideas became controversial when he said that many of the books under consideration were

"ideologically or politically or religiously polarizing." The books he cited that were then under consideration were by authors such as Jimmy Carter and Maria Shriver.

As an example of a non-ideological book, Savage suggested *Freakonomics*. But his comments to the group against picking an ideological book struck some the wrong way. Then one committee member sent an e-mail saying that a controversial book would get more students engaged and debating. The university, he wrote, "can afford to polarize, and in fact has an obligation to, on certain issues."

With that invitation, Savage offered his own suggestions on books that might fit the bill, including new books by Sen. Rick Santorum, a Pennsylvania Republican who is much loved by social conservatives, and by David Horowitz, the conservative gadfly who has pushed the Academic Bill of Rights, which is derided by faculty groups as taking away their rights. But the suggestion that created the furor was another one: *The Marketing of Evil: How Radicals, Elitists, and Pseudo-Experts Sell Us Corruption Disguised as Freedom*, by David Kupelian.

While the book has many targets, gay people rank high as a source of problems, with frequent implications of a gay conspiracy hurting society. Publicity material for the book blasts the gay civil-rights movement for changing "America's former view of homosexuals as self-destructive human beings into their current status as victims and cultural heroes" and says that this transformation campaign "faithfully followed an in-depth, phased plan laid out by professional Harvard-trained marketers."

Almost immediately, fellow panel members (and soon others at the university) not only objected to the book (which never seems to have been in serious contention for freshmen to read), but to the idea that it would be offered for consideration. It was called "homophobic tripe" in one e-mail, and others noted the book's lack of scholarly rigor, the statements in the book about gay people and others that have been widely debunked, the impact that reading such a book would have on gay people at the university, etc. As these e-mails escalated—with many of them circulating on the entire campus—the Faculty Senate considered filing formal charges of harassment against Savage.

In the end, two faculty members charged him with harassment based on sexual orientation. The complaint said that gay faculty members were made to feel unsafe by Savage's advocating the book as a reading assignment, and others questioned whether they would feel comfortable sending gay students to the library or encouraging any student to research gay-related topics, in light of Savage's role there.

The Alliance Defense Fund has now warned Ohio State that it may sue on Savage's behalf if charges aren't dropped and if the university does not state in public that Savage is not guilty of harassment. The fund, which focuses on the rights of religious people, has recently started focusing more attention on higher education. Savage is a member of a conservative Quaker group known as "plain Christians." As such, he avoids much modern technology, according to the fund, using a horse and buggy for transportation, for example. But he does use e-mail extensively for his work.

David French, senior legal counsel at the fund, said, "It is shameful that OSU would investigate a Christian librarian for simply recommending books that are at odds with the prevailing politics of the university." French added that this case demonstrated that "universities are one of the most hostile places for Christians and conservatives in America."

Ohio State administrators said they were studying the fund's charges and had no comment on the situation.

A number of faculty members were reluctant to speak publicly, and some who strongly objected to Savage's recommendation of a book for freshmen also objected to the idea of charging him with harassment—particularly given that the move would somewhat predictably be used by conservatives to attack academe. Several also said that the fund was exaggerating the threat to Savage. They noted that he has been charged with harassment based on sexual orientation, not sexual harassment, as the fund's press release states. They also noted that Ohio State has made no findings in the case.

One professor who was willing to talk on the record was Christopher Phelps, an associate professor of history who has not played any role in the complaint. He said of Savage's nomination for the freshman book: "It was a ludicrous book to select and the idea that a chief reference librarian would be proposing a book full of homophobic nonsense was deeply disturbing to the faculty." Phelps said it was important to remember that there are relatively few out gay faculty members at the university and that they face hostility in the region.

Added Phelps: "If the book he had proposed was a Klan title promoting the inferiority of African Americans, would anyone be questioning the anger of the faculty?"

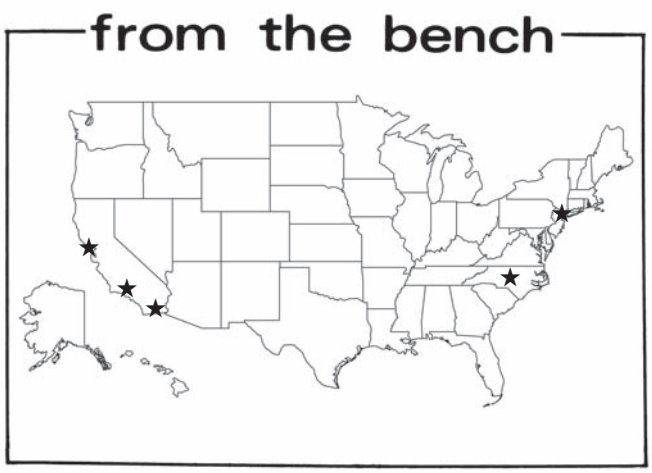
In the fall, freshmen will not be reading *The Marketing of Evil*. The book selected by the committee was *The Working Poor*, by David K. Shipler. Reported in: inside highered.com, April 14.

Nashville, Tennessee

A Belmont University administrator is out of a job after Nashville's alternative newspaper drew attention to a mocking cartoon he drew of the Muslim prophet Muhammad. The Baptist university in turn has been criticized by some for having an official who would mock another faith and for allegedly forcing out someone for expressing a commitment to free expression.

Bill Hobbs is a conservative blogger and political commentator based in Nashville and he was a public relations

(continued on page 215)



U.S. Supreme Court

In a ruling affecting millions of government employees, the Supreme Court declared May 30 that the Constitution does not always protect their free-speech rights for what they say on the job. In a 5-to-4 decision, the court held that public employees' free-speech rights are protected when they speak out as citizens on matters of public concern, but not when they speak out in the course of their official duties.

The ruling, involving a deputy Los Angeles district attorney who contended that he had been denied a promotion for challenging the legitimacy of a search warrant, came in a case that has been closely watched not just by public workers but by those who have worried that it could discourage internal whistle-blowers from speaking up about government misconduct and inefficiency.

"We hold that when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline," Justice Anthony M. Kennedy wrote for the court.

The court's newest justice, Samuel A. Alito, Jr., was in the majority as were Chief Justice John G. Roberts, Jr., Justices Antonin Scalia and Clarence Thomas.

The ruling noted the enormous variety of factual situations involving relationships between public employers and their employees, and it suggested that the particular facts of a case must be closely examined.

In this case, the Los Angeles deputy prosecutor, Richard Ceballos, complained to his bosses in early 2000 that after being alerted by a defense lawyer, he had found "serious misrepresentations" in an affidavit used to obtain a search warrant. Discussions with his superiors were heated, and a trial court rejected challenges to the warrant. In the aftermath, Ceballos contended, he was reassigned and denied a promotion. He filed an employee grievance, which was denied based on a finding that he had not suffered any retaliation, despite his claim to the contrary.

Ceballos took his case to federal district court, which threw it out after accepting his employer's argument that the actions Ceballos complained about were explainable by legitimate staffing needs. But the United States Court of Appeals for the Ninth Circuit reversed the lower court, concluding that Ceballos's free-speech rights had indeed been violated.

The case, *Garcetti* v. *Ceballos*, was one of a long line of cases addressing the rights of public employees and surely not the last. When it was argued before the justices on October 12, the Bush administration sided with Los Angeles County in arguing that if the Ninth Circuit were upheld, public employees would in effect get constitutional protection for performing their duties "to the dissatisfaction of the employer."

Employees who think they are unfairly treated should rely on Civil Service laws, Los Angeles County said.

Ceballos's lawyer argued unsuccessfully that the result the government lawyers were seeking would cause an unacceptable chilling of the speech of potential whistle-blowers. Justice Kennedy was skeptical of that position at the time. "You're saying that the First Amendment has a function within the government office," he said. "The First Amendment isn't about policing the workplace."

In writing the decision that reversed the Ninth Circuit, Justice Kennedy noted that the Supreme Court has made it clear in previous rulings "that public employees do not surrender all their First Amendment rights by reason of their employment." On the other hand, he wrote, "When a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom."

The controlling factor in this case, Justice Kennedy wrote, was that Ceballos was acting purely in an official capacity when he complained internally about the search warrant. "Ceballos wrote his disposition memo because that is part of what he was employed to do," Justice Kennedy wrote. "He did not act as a citizen by writing it."

To accept Ceballos's argument, the majority concluded, would be to commit state and federal courts to "a new, permanent and intrusive role" overseeing communications among government employees and their superiors.

Dissenting in three separate opinions were Justices John Paul Stevens, David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer.

"The notion that there is a categorical difference between speaking as a citizen and speaking in the course of one's employment is quite wrong," Justice Stevens wrote. He said the majority ruling could have the "perverse" effect of giving public employees an incentive to speak out publicly, as citizens, before talking frankly to their superiors.

And Justice Souter asserted that "private and public interests in addressing official wrongdoing and threats to public health and safety can outweigh the government's stake in the efficient implementation of policy, and when they do public employees who speak on these matters in the course of their duties should be eligible to claim First Amendment protection." Reported in: *New York Times*, May 30.

A divided Supreme Court declined April 3 to decide whether President George W. Bush has the power in the war on terrorism to order American citizens captured in the United States held in military jails without any criminal charges or a trial.

By a 6–3 vote, the court sided with the Bush administration and refused to hear an appeal by Jose Padilla, who was confined in a military brig in South Carolina for more than three years after Bush designated him an "enemy combatant." The court's action does not amount to a ruling on the merits in the high-profile terrorism case and does not create any national precedent. Reported in: Reuters, April 3.

The Supreme Court sidestepped a contentious church–state dispute April 24, declining to hear a case concerning a public school district's refusal to display a picture of Jesus submitted by a kindergarten student in response to an assignment to design a poster on the environment.

The child's parents sued the school district, in Baldwinsville in central New York State, on the ground that the school's response to their son's artwork violated his right to free speech and amounted to official discrimination against religion.

The suit was dismissed by the federal district court in Syracuse but reinstated last October by the federal appeals court in Manhattan. That court held that the school's action was suggestive of antireligious "viewpoint discrimination" that could be justified only by an "overriding" government interest.

The appeals court sent the case back to the district court for further examination of whether there was discrimination and, if so, whether it might be justified, for example by the need to avoid the appearance of religious endorsement. The prospect of further proceedings in the case, which concerns events that occurred nearly seven years ago, meant that the Baldwinsville Central School District could not present the Supreme Court with a final judgment.

While the justices usually turn down cases that are still under review, the school district argued in this case that the appeals court had reached a legal conclusion on which the lower federal courts are divided and that needed the Supreme Court's attention, regardless of future developments in that dispute. The justices offered no comment in refusing the case, *Baldwinsville Central School District* v. *Peck*.

The Supreme Court has not directly addressed this issue. Nor has it examined students' free-speech rights in elementary school. Its infrequent rulings on student speech have been in cases from high schools and universities. In 1988, the court ruled in *Hazelwood School District* v. *Kuhlmeier* that a public high school principal's censorship of the student newspaper was justified because the paper was part of the curriculum and the school's control over its content was "reasonably related to legitimate pedagogical concerns."

In the Baldwinsville case, Judge Guido Calabresi of the United States Court of Appeals for the Second Circuit said the case came "within the core of *Hazelwood's* framework." Further, Judge Calabresi said the question of whether the Supreme Court meant to give school administrators latitude to single out particular viewpoints for censorship was "anything but clear."

Nonetheless, his opinion for the appeals court concluded that "a manifestly viewpoint-discriminatory restriction on school-sponsored speech" would be "unconstitutional even if reasonably related to legitimate pedagogical interests," unless justified by a "sufficiently compelling state interest."

The school argued in its Supreme Court appeal that the appeals court misunderstood the *Hazelwood* decision. The federal appeals courts in Boston and Denver have concluded that neither the precedent nor the Constitution required that the regulation of school-sponsored speech be neutral as to viewpoint.

The decision "robs teachers of the appropriate and necessary control of their classrooms" and will encourage "frivolous lawsuits," the school district told the court, adding that schools were surely free to sponsor speech against drug use or irresponsible sex without also presenting the opposite point of view.

The kindergartner's parents, Joanne and Kenley Peck, were represented by Liberty Counsel, a legal organization based in Maitland, Florida, that describes itself on its Web site as committed to "restoring the culture one case at a time." Reported in: *New York Times*, April 25.

The U.S. Supreme Court refused May 15 to consider reinstating a California law adopted after the Rodney King beating that made it a crime to knowingly lodge false accusations against police officers. The justices, without comment, let stand a November decision by the San Francisco-based U.S. Court of Appeals for the Ninth Circuit, which said the law was an unconstitutional infringement of speech because false statements in support of officers, or sometimes even by the police officers, was not criminalized.

That decision was hailed by civil liberties groups and opposed by the California District Attorneys Association and law enforcement groups.

The high court's action nullifies a 2002 decision by the California Supreme Court, which had ruled that free speech concerns took a back seat when it came to speech targeting police officers.

California lawmakers enacted the measure following a flood of hostile complaints against police officers statewide following King's 1991 taped beating. Adopted in 1995, a violation of the law was punishable by up to six months in jail.

The challenge was brought by Darren Chaker, now thirty-four of Beverly Hills, who was convicted in San Diego County in 1999 of making a false complaint against an El Cajon police officer. Chaker was originally arrested for theft of service for retrieving his car from a mechanic without paying—charges that were later dropped. He complained that the arresting officer, without provocation, hit him in the ribs and twisted his wrist.

He was convicted of making up the story and sentenced to two days in custody, fifteen days of community service and three years' probation. After appealing unsuccessfully to state courts and a federal judge, Chaker won a ruling in November from the San Francisco federal appeals court.

Attorney General Bill Lockyer's office, backed by law enforcement groups, appealed to the U.S. Supreme Court, which decided not to hear the case.

"This sends a message about what society's willing to accept or not accept to protect their police officers," Chaker said. "It's not my victory. It's a victory for everybody."

In 2002, the California Supreme Court upheld the law and the thirty-day sentences of two Oxnard residents who complained that an Oxnard police officer exposed himself to about fifty teenagers at an awards banquet. The high court action undercuts that precedent.

The Oxnard Police Department said it investigated the couple's allegations and could not corroborate them, so Ventura County prosecutors tried and convicted the two. California's justices, in ruling against the pair's First Amendment challenge, said the potential harm from false reports could damage an officer's credibility and even waste police resources investigating the complaints. The case is *Crogan* v. *Chaker*. Reported in: *San Jose Mercury-News*, May 15.

National Security Letters

New York, New York

A federal appeals judge warned the government May 23 that the permanent ban on speech it seeks with its FBI National Security Letters—which allow it to obtain records about people in terrorism investigations—was probably unconstitutional.

Judge Richard Cardamone of the U.S. Court of Appeals for the Second Circuit commented as the court acted on lawsuits challenging the government's ability to force companies to turn over information about customers or subscribers as part of the war on terrorism and keep quiet about it.

"While everyone recognizes national security concerns are implicated when the government investigates terrorism within our nation's borders, such concerns should be leavened with common sense so as not forever to trump the rights of the citizenry under the Constitution," he said.

Alluding to a recent change in federal law, a three-judge panel including Cardamone dismissed a Connecticut case as moot and returned a New York case to a lower court judge to see how the new law affects it.

Cardamone wrote a separate concurring opinion to highlight what he said was the government's recent insistence that a permanent ban on speech is sometimes permissible under the First Amendment. He said he suspected "a perpetual gag on citizen speech of the type advocated so strenuously by the government may likely be unconstitutional."

Cardamone said courts historically have ruled in favor of the government when a ban on speech is limited so that it narrowly meets the demands of a compelling government interest. He said the bans are not constitutional once an investigation ends.

Lately, though, the government has insisted that permanent bans on speech are necessary in antiterrorism probes because all terrorism investigations are permanent and unending and grow out of other investigations, he said.

"The government's urging that an endless investigation leads logically to an endless ban on speech flies in the face of human knowledge and common sense: witnesses disappear, plans change or are completed, cases are closed, investigations terminate," he wrote.

He said a ban on speech and an unending shroud of secrecy concerning government actions "do not fit comfortably with the fundamental rights guaranteed American citizens" and could serve as a cover for official misconduct.

The comments came as the Manhattan court considered the First Amendment ramifications of challenges to government searches of Internet and telephone records, a right the government gained under a 1986 law that was expanded by the PATRIOT Act of 2001.

Recently, Congress made changes in the law that affect national security letters, or NSLs, investigative tools used by the FBI to compel businesses to turn over customer information without a judge's order or grand jury subpoena. The changes specify that an NSL can be reviewed by a court and explicitly allows those who receive the letters to inform their lawyers about them.

The appeals court said the changes render moot a Connecticut case in which U.S. District Judge Janet Hall ruled that a gag order on librarians who received an FBI demand for records about patrons unfairly prevented them

from joining a debate over the rewriting of the PATRIOT Act (see page 173).

In the New York case, U.S. District Judge Victor Marrero had ruled that the National Security Letters violate the Constitution because they amount to unreasonable search and seizure. He found that the nondisclosure requirement violated free speech. The case pertained to an unidentified Internet access firm that received one of the letters in which the FBI certified that phone or Internet records are "relevant to an authorized investigation to protect against international terrorism or clandestine intelligence activities."

The appeals court said Marrero can consider new evidence or arguments and rule again. Cardamone said the government had asked the appeals court to vacate Hall's ruling in the Connecticut case rather than leaving it unreviewed.

He said the request was "not surprising but right in line with the pervasive climate of secrecy." He said the government, in effect, was seeking to "purge from the public record the fact that it had tried and failed to silence the Connecticut plaintiffs."

American Civil Liberties Union lawyer Ann Beeson, who argued before the appeals court, said Cardamone was "sending a strong message to the government that it can't simply claim secrecy is always necessary to protect national security." She said it's clear the government "was using the PATRIOT Act as a gag to prevent these librarians in Connecticut from speaking publicly about the PATRIOT Act." Reported in: *Stamford Advocate*, May 23.

schools

San Diego, California

A suburban San Diego teenager who was barred from wearing a T-shirt with anti-gay rhetoric to class lost a bid to have his high school's dress code suspended April 20 after a federal appeals court ruled the school could restrict what students wear to prevent disruptions. The ruling by the San Francisco-based U.S. Court of Appeals for the Ninth Circuit addressed only the narrow issue of whether the dress code should be unenforced pending the outcome of the student's lawsuit.

A majority of judges said, however, that Tyler Chase Harper was unlikely to prevail on claims that the Poway Unified School District violated his First Amendment rights to freedom of speech and religion for keeping him out of class when he wore a shirt with the message "homosexuality is shameful."

Harper was a sophomore at Poway High in 2004 when he wore the T-shirt the day after a group called the Gay-Straight Alliance held a "Day of Silence" to protest intolerance of gays and lesbians. The year before, the campus was disrupted by protests and conflicts between students over the Day of Silence. Reported in: Associated Press, April 20.

colleges and universities

San Francisco, California

The University of California's Hastings College of Law can deny student-activities funds and official recognition to a Christian student group that does not allow gay and lesbian members, according to an April ruling by the U.S. District Court in San Francisco. The ruling was a setback for the Christian Legal Society, which has chapters at more than eighty law schools. The group has settled disputes with other law schools that have allowed its chapters to exclude gay and lesbian students and still receive funds and official recognition.

In this case, however, the judge wrote that denying recognition to the group did not violate its right to free speech. What's more, according to the ruling, including homosexual students as members would not impair the group's mission. U.S District Judge Jeffrey S. White cited the law school's "compelling interest to protect its students from discrimination."

The law school, which had refused to settle the case with the student group and had vowed to defend its policy in court, hailed the ruling. "It's the first case to definitively resolve these issues which have been raised by the Christian Legal Society across the country," said Ethan P. Schulman, a lawyer for the law school.

The society was not pleased with ruling. "We believe the district court, with all due respect, got a number of the constitutional issues fundamentally wrong," said Steven H. Aden, chief litigation counsel for the Center for Law and Religious Freedom, the litigation branch of the Christian Legal Society. Aden said the group would appeal.

In August 2005, the U.S. Court of Appeals for the Seventh Circuit issued a preliminary injunction stating that Southern Illinois University at Carbondale could not deny official recognition to the group. The next month, Arizona State University reached a settlement with the group that allowed the chapter there to continue restricting its membership. Reported in: *Chronicle of Higher Education* online, April 20.

Chapel Hill, North Carolina

A federal judge in May dismissed a lawsuit brought by a Christian fraternity against the University of North Carolina at Chapel Hill, which had previously refused to recognize the group because it does not allow non-Christians to join. But the outcome was not a clear-cut victory for either side. That's because the university changed its nondiscrimination policy last year, allowing groups to select members "on the

basis of commitment to a set of beliefs"—even though they are still forbidden to discriminate on the basis of sexual orientation, for example. That change made the group's lawsuit "moot," according to Judge Frank W. Bullock, Jr., of the U.S. District Court in Greensboro.

But the fraternity, Alpha Iota Omega, had argued that the change was not enough and wanted more explicit protection under the policy. The judge, however, disagreed. "Plaintiffs filed this lawsuit as outsiders, challenging the university system, and end this lawsuit as insiders, fully participating in the university system," he wrote in his opinion.

James C. Moeser, North Carolina's chancellor, praised the decision. "Our successful motion to dismiss the case and the plaintiff's claims reflected good-faith voluntary efforts to clarify the university's existing nondiscrimination policy, which had been repeatedly misinterpreted or misunderstood by the plaintiffs—a fact duly noted by the court," he said in a written statement.

But the Foundation for Individual Rights in Education (FIRE), a Philadelphia-based watchdog group that had written letters early on in support of the lawsuit, said the outcome was a victory for the fraternity. "I don't feel satisfied that the university is pretending that it won," said Greg Lukianoff, FIRE's president. He said that the lawsuit, even though it was eventually dismissed, had forced the university to alter its policy and recognize the group.

The university's previous refusal to recognize the group, according to Lukianoff, was a violation of its members' First Amendment right to free association. Reported in: *Chronicle of Higher Education* online, May 9.

harrassment

Los Angeles, California

Script writers for both television sitcoms and dramas were given the license April 20 to be as raunchy as they like during the creative process—as long as their raw talk doesn't single out specific people as the butt of the jokes.

In a case that put the entertainment and publishing industries on edge—and had some Hollywood honchos speaking out—the California Supreme Court unanimously ruled that sexually coarse and vulgar language is often a necessary part of the creative process when producing a hit TV show.

The case involved alleged harassment by writers for the award-winning sitcom "Friends," and the decision, authored by Justice Marvin Baxter, held that crass brainstorming—complete with foul words and lewd sexual simulations—crosses the line only if it targets a person because of his or her sex or is severe enough to create a hostile work environment.

Neither behavior occurred in *Lyle* v. *Warner Brothers Television Productions*, Baxter held.

"The record here reflects a workplace where comedy writers were paid to create scripts highlighting adult-themed sexual humor and jokes, and where members of both sexes contributed and were exposed to the creative process," he wrote.

"Moreover," he continued, "there was nothing to suggest the defendants engaged in this particular behavior to make plaintiff uncomfortable or self-conscious, or to intimidate, ridicule or insult her."

Adam Levin, a partner in Los Angeles' Mitchell Silberberg & Knupp who represented the writers and Warner Brothers, credited the court with achieving "an appropriate balance between civil rights and civil liberties."

In a separate concurring opinion, however, Justice Ming Chin argued the court should have gone further and ruled that the writers' words and actions were also protected as free speech. "Creativity is, by its nature, creative. It is unpredictable," he wrote. "Much that is not obvious can be necessary to the creative process. Accordingly, courts may not constitutionally ask whether challenged speech was necessary for its intended purpose."

Three male writers for *Friends* wound up in court after Amaani Lyle, a former writer's assistant, sued them and Warner Brothers for allegedly subjecting her to a hostile work environment during her four months on staff in 1999. Lyle, now a senior airman writing press releases for the Air Force in Germany, claimed constant banter about the writers' sexual activities and proclivities—along with constant talk about anal sex, blow jobs, "schlongs" and "cunts"—went too far. One writer kept a coloring book in which he drew breasts and vaginas on female cheerleaders, Lyle said, while all three made vile sexual remarks about *Friends* actresses Jennifer Aniston and Courteney Cox Arquette.

Los Angeles County Superior Court Judge David Horwitz granted summary judgment for the writers and other defendants, awarding them more than $21,000 in costs and nearly $416,000 in attorney fees. But in 2004, L.A.'s 2nd District Court of Appeal reversed, holding that Lyle had a right to have her hostile work environment claim heard by a jury.

The Supreme Court ruling went far in defending the writers, saying Lyle needed to show that the crude language and acts were directed toward her and other women, and that there had to be a "concerted pattern" of mistreatment.

"That the writers commonly engaged in discussions of personal sexual experiences and preferences and used physical gesturing while brainstorming and generating script ideas for this particular show was neither surprising nor unreasonable from a creative standpoint," Baxter wrote. "Indeed," he added, "plaintiff testified that, when told during her interview for the *Friends* position that 'the humor could get a little lowbrow in the writers' room,' she responded she would have no problem because previously she had worked around writers and knew what to expect."

Baxter also said, however, that language similar to what was used by the *Friends* writers could be construed as harassment in different situations. "We simply recognize," he wrote, "that, like Title VII, the [Fair Employment and Housing Act] is not a 'civility code' and [is] not designed to rid the workplace of vulgarity."

In his concurrence, Chin quoted extensively from briefs filed by *amicus curiae* from various writers' guilds and from television bigwigs—including Steven Bochco, co-creator of *Hill Street Blues, L.A. Law* and *NYPD Blue,* and Norman Lear, creator of *All in the Family*. In fact, Chin said he couldn't imagine *All in the Family*, which dealt with mostly racial bias, having achieved success if writers feared lawsuits.

He also recognized that the writers with *Friends* went to extremes. "They pushed the limits—hard," Chin wrote. "Some of what they did might be incomprehensible to people unfamiliar with the creative process. But that is what creative people sometimes have to do." Reported in: *The Recorder*, April 21. □

libraries

Washington, D.C.

MySpace and other social-networking sites like LiveJournal.com and Facebook are the potential targets for a proposed federal law that would effectively require most schools and libraries to render those Web sites inaccessible to minors, an age group that includes some of the category's most ardent users.

"When children leave the home and go to school or the public library and have access to social-networking sites, we have reason to be concerned," said Rep. Michael Fitzpatrick, a Pennsylvania Republican.

Fitzpatrick and fellow Republicans, including House Speaker Dennis Hastert, on May 10 endorsed new legislation that would cordon off access to commercial Web sites that let users create public "Web pages or profiles" and also offer a discussion board, chat room, or e-mail service.

That's a broad category that covers far more than social-networking sites such as Friendster and Google's Orkut.com. It would also sweep in a wide range of interactive Web sites and services, including Blogger.com, AOL and Yahoo's instant-messaging features, and Microsoft's Xbox 360, which permits in-game chat.

Fitzpatrick's bill, called the Deleting Online Predators Act, or DOPA, is part of a new, poll-driven effort by Republicans to address topics that they view as important to suburban voters. Republican pollster John McLaughlin polled twenty-two suburban districts and presented his research at a retreat earlier this year. Rep. Mark Kirk, an Illinois Republican, is co-sponsoring the measure.

The group, which is calling itself the "Suburban Caucus," convened a press conference to announce new legislation it hopes will rally conservative supporters—and prevent the Democrats from retaking the House of Representatives during the November mid-term election.

For its part, MySpace has taken steps to assuage concerns among parents and politicians (Massachusetts Attorney General Tom Reilly also took aim at MySpace this week). It assigned about one hundred employees, about one-third of its workforce, to deal with security and customer care, and hired Hemanshu (Hemu) Nigam, a former Justice Department prosecutor as chief security officer.

"We have been working collaboratively on security and safety issues with an array of government agencies, law enforcement and educational groups, nonprofits and leading child safety organizations," said Rick Lane, vice president for government affairs at MySpace owner News Corp. "We've also met with several state and federal legislators and are working with them to address their concerns. We hope this healthy dialogue will continue."

Fitzpatrick, who represents a suburban district outside Philadelphia, acknowledged that MySpace "is working" on this. Still, he said, children are "unattended on the Internet through the course of the day" when they're at libraries and schools.

"My bill is both timely and needed and will be very well accepted, certainly by the constituents I represent," Fitzpatrick said. Backers of the proposal argue that it's necessary to protect children. Hastert said that it "would put filters in schools and libraries so that kids can be protected . . . We've all heard stories of children on some of these social Web sites meeting up with dangerous predators. This legislation adds another layer of protection."

To curb teenage access to interactive Web sites, Republicans chose to target libraries and schools by expanding the Children's Internet Protection Act. That law, signed by President Clinton in December 2000, requires schools and libraries that receive federal funding to block access to off-color materials. Librarians challenged it in federal court on First Amendment grounds, and the U.S. Supreme Court upheld the law by a 6–3 vote in June 2003.

DOPA would add an additional requirement. It says that libraries, elementary and secondary schools must prohibit "access to a commercial social-networking Web site or chat room through which minors" may access sexual material or be "subject to" sexual advances. Those may be made available to an adult or a minor with adult supervision "for educational purposes."

Lynne Bradley, director of the American Library Association's office of government relations, said she was reviewing the legislation. She added, "We're as protective

of kids as any other profession, but we do know there are legitimate uses (of social-networking sites)."

"ALA is always in favor of having quality and detailed education on how best to use the Internet and other digital tools and the best user is an informed user who knows the risks, how to avoid them, and how to keep him or herself safe," Bradley said.

According to the Federal Communications Commission, there have been 25,707 agreements to provide federal funding to school districts or individual schools, and 3,902 agreements to libraries or library systems. The ALA estimates that as many as two-thirds of libraries receive federal funding and would be affected by DOPA.

DOPA also would require the Federal Trade Commission to set up a Web site about the "potential dangers posed by the use of the Internet by children" and order the Federal Communications Commission to create a committee and publish a list of Web sites "that have been known to allow sexual predators" access to minors' personal information.

Rosa Aronson, director of advocacy for the National Association of Secondary School Principals also said her organization did not currently have a position on DOPA. "We are grappling with the tension between promoting our normal policy, which is to promote local control for schools, and on the other end of the spectrum, there is the issue of protection of students," Aronson said.

Adam Thierer, a senior fellow at the free-market Progress & Freedom Foundation, was not as reticent. "This is the next major battlefield in the ongoing Internet censorship wars: social-networking Web sites," he said. "Many in government will want to play the role of cyber traffic cop here, just as they have for other types of speech on the Internet," Thierer said, adding that it will "chill legitimate forms of speech or expression online."

Laws restricting Web sites tend to be challenged in the courts. The ALA, for instance, sued to overturn the Communications Decency Act in 1996 and the library-filtering requirement a few years later. But DOPA seems to have been written to benefit from the high court's 2003 ruling that library filtering was permissible. Robert Corn-Revere, a partner at the law firm of Davis Wright Tremaine who has argued before the Supreme Court, said the eventual fate of DOPA may depend on whether it's implemented narrowly or broadly. Even so, Corn-Revere said, "treating MySpace sites like poison seems like an extreme overreaction." Reported in: C/Net.com, May 11.

schools

Tallahassee, Florida

Florida Governor Jeb Bush has signed into law a new comprehensive K–12 education bill—the Florida Education Omnibus Bill (H.B. 7087e3). Buried in the 160-page bill are new provisions designed to "meet the highest standards for professionalism and historic accuracy." Some Florida history teachers, though, question the philosophical underpinnings of the law.

The most controversial passage states: "American history shall be viewed as factual, not constructed, shall be viewed as knowable, teachable, and testable, and shall be defined as the creation of a new nation based largely on the universal principles stated in the Declaration of Independence." To that end teachers are charged not only to focus on the history and content of the Declaration but are also instructed to teach the "history, meaning, significance and effect of the provisions of the Constitution of the United States and the amendments thereto . . ." Other bill provisions place new emphasis on "flag education, including proper flag display and flag salute" and on the need to teach "the nature and importance of free enterprise to the United States economy."

Unlike the U.S. Senate version of the proposed new federal "Higher Education Act" (S. 1614) that seeks to define "traditional" American history, the Florida statute does not specifically define American history at all, rather, it describes what it is to include: "the period of discovery, early colonies, the War for Independence, the Civil War, the expansion of the United States to its present boundaries, the world wars, and the civil rights movement to the present." Special provisions mandate the teaching of the history of the Holocaust, the history of African Americans, and Hispanic "contributions" to the United States. The role that Native Americans played in American history escapes mention. In highly prescriptive language students are to be taught "the arguments in support of adopting our republican form of government" as embodied in the Federalist Papers. The proscriptive language causes thoughtful teachers to wonder whether they are permitted to teach the line of reasoning advanced by the anti-federalists.

While the goal of the bill's designers is "to raise historical literacy" concerning the documents, people, and events that shaped the nation, some history educators question the emphasis on teaching only "facts." State Representative Shelley Vana, who also serves as the West Palm Beach teachers union president, wondered "whose facts would they be, Christopher Columbus's or the Indians?"

Theron Trimble, executive director of the Florida Council for the Social Studies, also questioned the bill's provision that declares that teachers are not to "construct" history. Trimble asserts that "American history tends to get reinterpreted and re-reviewed in cycles . . . It's a natural evolution, history is as changeable as the law." Perhaps Jennifer Morely, an American history and government teacher, best summarized the concerns of her colleagues: "If you just require students to memorize information, that's not the best way to create active citizens . . . we're just creating little robots."

The new law takes effect 1 July. Shortly thereafter, the state department of education will begin reviewing

their standards and textbooks in 2007. Reported in: *NCH Washington Update*, June 1.

Libertyville, Illinois

A north suburban school district could become one of the first in the state to adopt rules holding students accountable for what they post on blogs or social-networking Web sites like MySpace.com. The school board of Community High School District 128, which includes Libertyville and Vernon Hills High Schools, was expected to vote on a change to student conduct codes that would make evidence of "illegal or inappropriate behavior" posted on the sites grounds for disciplinary action.

"We're really making parents and students aware that they would be accountable" for what goes online, said Associate Supt. Prentiss Lea. He said posting a photo of bad behavior on a Web site is the same as if a student dropped the picture on his desk.

Some students chafe at the notion of school officials trolling their personal Web sites for rule infractions. "It's called 'MySpace' for a reason, not 'What-I-do-at-school Space,'" said Katy Bauschke, eighteen, a senior at Libertyville.

"Teachers don't want us to make our own mistakes," said her friend Laura Brenner, eighteen, a senior at Vernon Hills High. "They want to protect us, but they're overstepping their bounds."

Lea said district officials will not actively seek evidence by looking through students' sites; but when they are confronted with it, the code would lay out how they should proceed.

A spokesman for the Illinois Association of School Boards, which represents 97 percent of state school boards, said his group was not aware of similar proposals in other districts. "Whether or not it's the very first, it's hard to know," Jim Russell said. "There haven't been many, but there will probably be more."

The change would affect all students participating in extracurricular activities, including athletic teams, fine arts groups and school clubs. Lea said 75 percent to 80 percent of the district's 3,200 students participate in one or more activities. To participate, students must sign a pact that says they won't use alcohol, tobacco or drugs or "exhibit gross misconduct or behavior/citizenship that is considered detrimental to his/her team or school."

The proposed change states that "maintaining or being identified on a blog site which depicts illegal or inappropriate behavior will be considered a violation of this code."

Lea said officials would treat any incriminating information from a Web site as evidence they would use while conducting an investigation into the offending behavior. If district officials find illegal Web content about a student who is not involved in activities, they would investigate, contact the student's parents and decide whether to discipline the student or involve police, Lea said.

Tom Engstrom, Libertyville High's student representative to the school board, said he supports the change. "It makes kids more aware . . . of the consequences of their actions," said Engstrom, eighteen, who estimated that 75 percent of students at his school use social-networking sites.

Sites like MySpace, Xanga.com and friendster.com allow users to create a personal page where they can post pictures and information about themselves and network with other users.

Alex Koroknay-Palicz, executive director of the National Youth Rights Association, which lobbies for issues such as lowering the voting age and abolishing youth curfews, said the District 128 plan discriminates against young people.

"I think this is just a huge overstepping of schools' authority into the rights and privacy of students," he said. "If they're doing something on their own time, that issue is between them and their parents. It's not really the school's issue."

But Brian Schwartz, acting director and general counsel for the Illinois Principals Association, said legal precedents justify disciplining a student for behavior shown on a personal Web site. He cited examples of images posted online of students drinking alcohol and damaging school property. He said the issue gets more complicated if the posting is of something deemed objectionable, rather than illegal. Then the student's right to free speech comes into play. In such cases, a district must prove the behavior violates a law or a school rule, that there's a definite link of the behavior to the school and that the behavior constitutes a true threat to the students, staff or school property.

But, he said, students who want the fun of after-school activities must be willing to conform to school standards. "The law says you can't take away someone's right to attend school without due process," he said. "When it comes to athletics [and other activities] students don't have a right to participate; it's a privilege."

Lea said school officials have noticed the rise in popularity of social-networking sites. News reports of adults using the sites to prey on unsuspecting teenagers prompted them to educate the community on the issue. Among other things, the district has held talks for parents and teachers to introduce them to the sites, and has published tips on how to use them safely.

A committee of about thirty administrators, teachers and parents reviewed the codes of conduct earlier this year and decided to revise them to address blog sites as a "preventive and proactive" measure, Lea said. Reported in: *Chicago Tribune*, May 18.

Potosi, Missouri

A Missouri public school district's plan to sponsor a high school assembly by a creationist lecturer violates the U.S. Constitution and must be dropped, according to Americans United for Separation of Church and State. In a May 5 letter

to Superintendent Randy Davis and other school officials, Americans United demanded that the Potosi R-III School District cancel a high school assembly and middle school classroom visits by Mike Riddle of Answers in Genesis (AIG). AIG is a Kentucky-based fundamentalist Christian ministry that attacks evolution and argues for a literal reading of the biblical Book of Genesis.

"It is wrong for public schools to promote religion as science," said the Rev. Barry W. Lynn, Americans United executive director. "The Constitution does not permit it, and the U.S. Supreme Court has repeatedly ruled against it. Parents, not school officials, should make decisions about their children's religious upbringing," he continued. "This school district has stepped over the line."

According to the AIG Web site, Riddle was in Missouri to make presentations at Potosi Community Church and at Potosi Southern Baptist Church. According to the school district's Web site, AIG was scheduled to make a presentation of two hours and forty-five minutes at the Potosi High School. Sources said Riddle planned to visit classrooms at the local middle school later that day.

In the letter to school officials, Americans United Assistant Legal Director Richard Katskee asserted, "We write to inform you that the scheduled assembly and classroom presentations cannot lawfully be presented in the public schools and that allowing them to occur would be a substantial constitutional violation . . . Simply put, public schools may not lawfully seek to debunk evolution for religious ends, nor may they teach religious views of the origins of life. The May 8 assembly and classroom presentations by Answers in Genesis will do both."

Americans United and the Pennsylvania ACLU brought the recent Dover "intelligent-design" creationism lawsuit in Dover, Pennsylvania, that resulted in a sweeping defeat for a local school district that introduced religious material into the science curriculum. In December 2005, a federal district court ruled that the Constitution bars promotion of religion in public schools. Reported in: Americans United press release, May 5.

colleges and universities

Stanford, California

A professor of Middle Eastern history at Stanford University is suing David Horowitz for copyright infringement for publishing a pamphlet called "Campus Support for Terrorism" that featured the professor's photograph on its cover.

In the lawsuit, which was filed on April 3, the professor, Joel S. Beinin, says that he holds the copyright on the image, having secured it from the photographer after Horowitz's pamphlet went public in 2004. At no point, he says, did Horowitz ask permission to use the photograph.

Horowitz called the lawsuit "sheer harassment" and said that in using the photo, which he took from Beinin's Stanford Web page, he was exercising fair use.

The lawsuit was the latest development in a long-standing contentious relationship between the two men. Horowitz has long accused Beinin of being an apologist for terrorist groups in the Middle East. Beinin, a former president of the Middle East Studies Association of North America, denies this.

"I am not a supporter of terrorism," Beinin said. "I'm on the written record saying that attacks against civilians are indefensible."

The original cover of the pamphlet, which has been pulled from Horowitz's Web sites, placed Beinin's image alongside those of Rachel Corrie, a student activist who was killed in 2003 during an anti-Israel protest in Gaza; Sami Al-Arian, a former Florida computer-engineering professor who recently pleaded guilty to providing services to a terrorist group; and Lynne Stewart, a New York defense lawyer who was convicted of helping one of her clients transmit messages to terrorist cells in the Middle East.

Beinin and Horowitz each said he found the other's conduct ironic in light of his supposed political commitments.

Beinin said he thought it was strange "that a big supporter of property rights and the free market felt that it was OK to use my property." Horowitz, meanwhile, said he thought Beinin's lawsuit undermined the arguments of liberal professors who argue that Horowitz's "academic bill of rights" is an attempt to chill free speech in the classroom.

"If you want to see a way to chill expression, this is it," Horowitz said. "Instead of an intellectual discussion, he's gone to court."

Though Beinin said that his lawsuit does fall into the "broader context" of Horowitz's "concerted effort to intimidate academics who criticize the Bush administration," he said the suit itself is a simple matter of private property. "I don't see why asking him to desist from using my intellectual property is chilling his speech," said Beinin.

The professor said that he sent a fax to Horowitz two weeks before filing the lawsuit, asking him to stop using the photograph. Horowitz said he never received such a fax. Reported in: *Chronicle of Higher Education* online, May 12.

Boulder, Colorado

Lawyers representing some of the students who were photographed by campus police officers at a pro-marijuana rally in April at the University of Colorado at Boulder plan to sue the university, saying the university violated the students' federal civil rights. The police had posted online photographs of about 150 students—some of them smoking, others not—and offered fifty dollar rewards for their identities.

Perry R. Sanders, Jr., a lawyer for three of the students, said that the lawsuit was a last resort. "We had done every-

thing in our power to make this be a peaceful thing," he said.

Sanders, who is working with another lawyer, Robert J. Frank, on the case, said he had asked university officials to take down the photographs, "expunge" all information they had collected on the students, and stop "harassing" them in the middle of their final examinations. He said that campus police officers were calling students whose identities they had learned and demanding that they come in for questioning and "scaring people half to death."

"This is America," Sanders said. "You don't have to go talk to the police."

Barrie M. Hartman, a spokesman for the university, called the lawsuit baseless and the harassment accusation "nonsense." The university does not have that many police officers, he said. "They haven't got time to do that."

Sanders announced the intent to sue the university at a news conference held on the same campus field where students had gathered April 20 for a "4/20" event. (The number 420 is associated with the consumption of cannabis.) Numerous students, he said, had contacted him to complain about the photographs, but he and Frank are so far representing only three students, who were all pictured in the same photograph and all "doing nothing wrong." He said he planned to file suit in federal district court in Denver.

Hartman said the university police had followed proper procedure in handling the situation and acted responsibly. About seventy to eighty students, he said, have been identified and referred to the university's Office of Judicial Affairs for trespassing, not for smoking marijuana, "because we can't prove that." He said the university charged them with trespassing because the university had closed the field in anticipation of the event. Hartman said the field was posted with 40 signs telling students the field was closed and under "photo surveillance."

Students will have the chance to defend themselves to administrators in that office, he said. If found guilty, they could either pay a fine or do community service, he said. He added that possession of marijuana is a petty offense in Colorado. "It's no worse than a speeding ticket," he said.

The police have handed out about forty $50 rewards, Hartman said. University officials, he said, got so many calls from people with tips identifying students that officials took the photographs down from the university Web site. Also, administrators believed they had made their point with the site, he said.

"We're trying to send a message to students," Hartman said. "We don't like this event. We want it to go away. We don't condone it." Marijuana possession "is against the law," he said. "We have to react in some way." Reported in: *Chronicle of Higher Education* online, May 11.

New Haven, Connecticut

One of the most closely watched—and criticized—faculty searches this academic year is ending with Juan Cole apparently being rejected for a post in Middle Eastern history at Yale University.

Cole is a professor of history at the University of Michigan and president of the Middle East Studies Association. He also has one of the largest audiences of Middle Eastern studies experts through his blog, Informed Comment, on which he publishes numerous updates a day about events in the Middle East. Cole is a tough critic of U.S. foreign policy and of Israel's government—and his blog comments have been used for months by opponents of his appointment to kill it.

Yale officials were not commenting on Cole's status as a potential faculty member. Neither was Cole. A joint appointment in history and sociology had already been approved at the departmental levels. But the conservative blog Power Line reported that a senior appointments committee at Yale had overruled those votes, scuttling the move from Ann Arbor to New Haven. Power Line has been critical of Cole—it declared its scoop to be "today's good news"—but the report was confirmed by a professor with close knowledge of the search.

Zachary Lockman, a professor of Middle Eastern studies at New York University, called the campaign against Cole "an assault on academic freedom and the academic enterprise." Lockman is president-elect of the Middle East Studies Association. He stressed that he was speaking for himself, not the group, and that he didn't have firsthand knowledge of the Yale search.

Lockman said that Cole is "one of the preeminent historians of the modern Middle East and he's been attacked on political grounds—because he's critical of the Bush administration and Israel." Given Cole's reputation and the departmental backing for his appointment, Lockman said of the decision to reject Cole: "Universities seem to be willing to kowtow to pressure from outside interest groups."

Cole's critics—in The New York Sun, National Review, The Wall Street Journal and elsewhere, several of whom are now praising Yale for not hiring him—have maintained that they aren't using political tests, but object to Cole's career on a variety of grounds. They point to numerous quotes he has made (generally in his blog) that they say show a willingness to blame the United States and Israel inappropriately (Cole has said that some of the quotes are taken out of context and that others represent legitimate opinion). Several have also criticized his scholarship, saying that he is spending too much time on blogging and questioning his output of serious scholarship. (His supporters point to a long publication list.)

Michael Rubin, a scholar at the American Enterprise Institute, summarized the anti-Cole arguments in an opinion piece in *The Yale Daily News*. "Cole is a major public figure. But the political popularity and punditry should not substitute for research accuracy and experience. Bush criticism may be trendy and perhaps even valid, but the reputation of Yale's faculty . . . should be based on more," he wrote.

While it is unclear whether timing was a factor in Yale's decision, it probably didn't work in Cole's favor. The university has been facing considerable criticism in conservative circles since the publication in March of a profile in *The New York Times Magazine* of a former official of the Taliban government in Afghanistan who is studying at Yale. The headline on the Power Line article about the apparent end to Cole's candidacy at Yale was "No Teacher for Taliban Man."

Some of those expressing concern about the way Cole's candidacy was handled aren't scholars of the Middle East or political allies of Cole. Ralph E. Luker, who has criticized political litmus tests by a variety of political views, wrote on Cliopatria, a historians' blog, that "if a distinguished conservative scholar were denied an appointment at Yale because of her or his conservatism, partisans on the right would be, er, rightly outraged. Academic conservatives . . . can't both take heart from the denial of Juan Cole's appointment and continue their campaign for a 'depoliticized classroom.' However ideological Juan Cole may be, he is no Ward Churchill and conservative ideologues sullied the decision-making process by their ideologically-motivated public campaign against Cole's appointment."

As for Cole, he repeatedly declined to say anything about the Yale search. But he did agree to comment on the criticism he has received during the Yale search. "These vicious attacks on my character and my views were riddled with wild inaccuracies," he said, adding that the criticism was "motivated by a desire to punish me for daring to stand up for Palestinian rights, criticize Israeli policy, criticize Bush administration policies and, in general being a liberal Democrat."

Cole said the experience will not lead him to change his views or his public expression of his views. "The campaign has inspired me to redouble my efforts. Attempts at blackballing and at making intellectuals taboo always demonstrate the fear of ideas in one's opponents." Reported in: insidehighered.com, June 5.

Williamsburg, Kentucky

Jason Johnson loves the stage. In recent years, the sophomore at the University of the Cumberlands has performed in productions of Godspell and The Tempest. But in April he landed an unexpected role: spokesman for students who are both gay and Christian.

Johnson, twenty, was suspended from the small Baptist university after administrators viewed his personal Web page on MySpace.com. Johnson's online profile included photographs of his boyfriend, Zac Dreyer, a freshman at Eastern Kentucky University, and descriptions of their relationship. "The definite highlight of my week was Saturday," Johnson wrote in March. "Waking up next to the most beautiful boy ever . . ."

On most campuses, the musings of a love-struck student would not have been cause for controversy. Not so at Cumberlands. The university, which is affiliated with the Southern Baptist Convention, forbids students from engaging in premarital sex and homosexual acts.

The story of Johnson's dismissal spread far beyond the Appalachian foothills, igniting a debate about the fairness of policies like Cumberlands'. Most observers agree that what happened to Johnson is unfortunate. But has Cumberlands wronged him?

Two very different answers to that question swirled in Williamsburg. During a rally near the campus, students protested Johnson's suspension, calling it unfair and immoral. Meanwhile, Cumberlands officials were circulating a long public statement that described the university's stance as "rooted in its religious faith"—an opinion that many Cumberlands students share.

Johnson chose to attend Cumberlands because he liked its theater program. He also hoped the college would help him find himself. Baptized in a Baptist Church ten years ago, Johnson determined while still in high school that he was gay but did not tell anyone. After his freshman year at Cumberlands, he came out to his parents. When he returned to the campus last summer, he told his friends. He says students and professors were supportive.

"I'm still working through it," Johnson said, "but being at the university helped me reconcile my Christianity with who I was."

All students at Cumberlands receive copies of the student handbook each fall, and Johnson knew what it said about his sexual orientation. The university's student code states that any student "who engages in or promotes sexual behavior not consistent with Christian principles (including sex outside marriage and homosexuality) may be suspended or asked to withdraw." Nonetheless, Johnson did not think officials would ever enforce that provision.

In early April, however, administrators confronted him with printouts from his Web page. University officials would not say who told them about Johnson's Web page, though they insist they did not seek out such information. After he confirmed that the page was his, the university suspended him and told him to vacate his dorm.

Don Waggener, a Lexington lawyer who took Johnson's case, said the university also told his client, an honors student, that he would receive a failing grade in each of the classes he was taking. "It was a pretty vindictive act in an academic environment," Waggener said.

Michael Colegrove, the university's vice president for student services, disputed Johnson's account. "Jason was never given any indication at all that he would get all F's," he said. Colegrove also disputed Johnson's claim that the university made its policy on homosexuality stricter between the previous academic year and the current one. A spokesman for Cumberlands produced copies of the 2004–05 handbook that contained language identical to what's in this year's edition. "I've been here thirty years," Colegrove said, "and the policy hasn't changed."

In a legal agreement, the university rescinded Johnson's suspension and agreed to let him complete his assignments for academic credit in all of his classes (he plans to transfer to Eastern Kentucky in the fall). Johnson agreed not to sue the university for damages, though Waggener said Johnson planned to file complaints with the U.S. Department of Education and the Southern Association of Colleges and Schools, which accredits Cumberlands.

"Not everyone likes the university's policy," James H. Taylor, the university's president, said in a written statement. "But the university does not establish policy on the basis of popularity or political correctness . . . Jason is free to pursue an academic career at an institution which has values more in line with his own."

Although Cumberlands officials may base their conduct code on their own interpretation of Scripture, the university's policy on extramarital sex and homosexuality does not seem to violate any Kentucky or federal laws. Neither the state nor the federal government recognize sexual orientation as a "protected status," like race or gender.

"This is not a legally actionable situation," Sheldon E. Steinbach, vice president and general counsel for the American Council on Education, said of Johnson's suspension. "At a private institution, involvement with a student is purely contractual."

Johnson's case was hardly the first of its kind. In January, John Brown University, a Christian institution in Siloam Springs, Arkansas, dismissed a gay student after reading postings on his Web page. Recently, gay students were expelled from Union University, in Jackson, Tennessee, and North Central University, in Minneapolis, Minnesota. Gay-rights groups estimate that as many as two hundred Christian colleges and universities have a policy barring extramarital sex, including homosexual acts, though not all faith-based institutions dismiss students who violate those rules.

Laws aside, critics of such policies say religious institutions have a moral responsibility to embrace their gay and lesbian students. That idea is propelling the Soulforce Equality Ride: a bus carrying thirty-two young activists on a seven-week tour of nineteen religious colleges and military academies that ban gay and lesbian students.

That idea was also the rallying cry at an April 19 protest in Williamsburg. About fifty people, including students from at least six Kentucky colleges, gathered at a park to show their support for Johnson. Many carried homemade signs, one of which read, "If God didn't make homosexuals, then why do they exist?"

Jennifer Fore, a junior at Cumberlands, told the audience that Johnson's suspension had shaken her faith in the university. "I believe as a Christian that God shows love to all," Fore said. "I expect the same values of a Christian college. I came here for a reason, but they don't represent what I came here for."

Kelli Persons, a senior at Western Kentucky University, had just finished a fifteen-page term paper on female pirates before trekking to the protest. She had not met Johnson but his story inspired her to help organize the rally.

Shannon Elkins, a student from Eastern Kentucky, wore a T-shirt that said, "Jesus loves my gay friends, too." Elkins, who is heterosexual, said she came to the rally because she wanted to raise her son in a state that was tolerant of diversity.

The morning's most prominent speaker was State Sen. Ernesto Scorsone, a Democrat from Lexington and the state's only openly gay legislator. "We must look beyond laws and look into our hearts," Scorsone said. "The problem is not gay Christians—the problem is Christians who don't act like Christ."

Scorsone and several other Kentucky legislators have criticized the state's plan to give $11 million to Cumberlands to establish a pharmacy school. Critics of the plan contend that the state should not help finance a private college that discriminates against gay students. They have urged Kentucky's governor, Ernie Fletcher, a Republican, to veto the allocation.

As Senator Scorsone drew cheers from the protesters, Zac Dreyer, Johnson's boyfriend, described a recent nine-hour telephone call the two shared. "We both might have worried that this would break us apart," Dreyer said, "but actually it brought us closer together."

Before Johnson was suspended, he was the stage manager for this semester's campus production of Shakespeare's As You Like It. That he was unable to see the production through still bothers him. "The lesson," Johnson said of the play, "is that love is paramount and love takes over everything." Reported in: *Chronicle of Higher Education* online, April 20.

University Park, Pennsylvania

Pennsylvania State University has revised its policies on nondiscrimination and intolerance to clarify what constitutes harassment and protected speech on its campuses. The changes came three months after the institution was sued in federal court over free-speech issues, but university officials said the changes were not prompted by the lawsuit. A lawyer for the group that filed the suit, however, praised the university's actions. "To their credit, they've shown that you can protect free speech at the same time you prohibit real harassment," said David A. French, a lawyer with the Alliance Defense Fund, a conservative Christian legal-advocacy group based in Arizona.

The group filed the suit in February on behalf of Alfred J. Fluehr, a junior and a political-science major at the University Park campus who alleged that Penn State's policies amounted to a speech code and violated his First Amendment rights.

French said that the key changes were in the university's definitions of harassment and intolerance. "Previously, a reasonable person would think that speech could be censored if it was subjectively offensive," he said.

Under the new definition of harassment, physical or verbal conduct directed at an individual on the basis of race, religion, sexual orientation, or similar personal characteristics must be "sufficiently severe or pervasive so as to substantially interfere with the individual's employment, education, or access to university programs, activities, and opportunities" to qualify as such. The conduct must also "be such that it detrimentally affects the individual in question and would also detrimentally affect a reasonable person under the same circumstances."

The revised policy, French said, is more in line with case law in which harassment typically relates to the manner of speech rather than to the viewpoint. The policy "doesn't provide a blanket mechanism for making sure nobody's feelings get hurt," he said.

As for the university's definition of intolerance, it now refers to "conduct that is in violation of a university policy, rule, or regulation and is motivated by discriminatory bias against or hatred toward other individuals or groups based on characteristics" such as age, ancestry, or color, among other things. The previous definition, according to the lawsuit, stated that "intolerance refers to an attitude, feeling, or belief in furtherance of which an individual acts to intimidate, threaten, or show contempt for other individuals or groups" based on characteristics including age, ancestry, color, political belief, and race.

"I'm constitutionally entitled to show contempt for someone's political beliefs," French said. "That's just a fact."

He said he was pleased with the revision. "What speech-code proponents have done is expand the definition of harassment so much that it swallows up the First Amendment," French said. He added that with the changes, Penn State no longer has a speech code.

But Penn State officials said the institution never had one in the first place. "Penn State has no speech code," Tysen Kendig, a university spokesman, said. "We've never had a speech code." The university, he said, had been planning to revise the language in its policies for several months before the lawsuit was filed, "with the notion of adding clarity and removing any ambiguity or possibility of misinterpretation." Such policy reviews and revisions are routine, he said, and typically take place at the end of the academic year. That explains why the new policies went into effect last week, he said.

"These changes do appear to match up well with the interests of the plaintiff," Kendig said, "but the revision would have been made in this manner regardless of any legal action."

French said that he and his client were not dropping the lawsuit, as other issues in the case are pending. The court, he said, has ordered mediation between Penn State and his client, which is scheduled to happen before the end of the summer.

The lawsuit was one of two filed by French's group in February on behalf of students at universities in Pennsylvania. The other lawsuit, against Temple University, involves a graduate student who contends that two professors there engaged "in a campaign of retribution and retaliation" against him because he is a member of the national guard. That case is pending. Reported in: *Chronicle of Higher Education* online, May 25.

Internet

Washington, D.C.

Top law enforcement officials have asked leading Internet companies to keep histories of the activities of Web users for up to two years to assist in criminal investigations of child pornography and terrorism, the Justice Department said May 31.

Attorney General Alberto Gonzales and FBI Director Robert Mueller outlined their request to executives from Google, Microsoft, AOL, Comcast, Verizon and others in a series of private meetings at the Justice Department. The meetings reflect a new approach by law enforcement in anti-terrorism efforts. Previously, the Justice Department had invoked the need for data retention only to battle child pornography. Since the September 11 attacks, Internet traffic has become increasingly critical to terrorism investigations, too.

Justice is not asking the companies to keep the content of e-mails, spokesman Brian Roehrkasse said. It wants records such as lists of e-mail traffic and Web searches, he said. Roehrkasse said the government is required to seek proper legal authority, such as a subpoena, before obtaining the records. He said any change in the retention period would not alter that requirement. Law enforcement officials have seen investigations derailed "time and time again" because of a lack of data, Roehrkasse said.

The government's request forces the companies to strike a balance between satisfying law enforcement demands and honoring the privacy of millions of customers.

"The issue for us is not whether we retain data, but we want to see it done right," says Dave McClure, president of the U.S. Internet Industry Association, which represents 150 companies, primarily Internet service providers. "Our concerns are who pays for it, what data is retained, and if it is retained legally without violating federal laws and subscriber agreements."

Lee Tien, a lawyer for the privacy advocacy group Electronic Frontier Foundation, said he was concerned. "I think that the request raises some really, really major privacy problems," he said. The Justice Department is "asking ISPs (Internet service providers) to really become an arm of the government."

The request creates a logistical challenge: Most Internet providers store data such as Web searches for 30 to 90 days. Storing such information significantly longer is more expensive, McClure and others said.

"We strongly support Gonzales' interest in assuring that the Internet is safe for everyone," Phil Reitinger, Microsoft's senior security strategist, said in a statement that acknowledged the company's participation in the meetings at Justice. "But data retention is a complicated issue."

"We believe (data retention and preservation) proposals deserve careful review and must consider the legitimate interests of individual users, law enforcement agencies, and Internet companies," Google spokesman Steve Langdon said.

Gonzales broached the issue of record retention in April during a speech at the National Center for Missing & Exploited Children in Alexandria, Virginia. Gonzales, who has made fighting child exploitation a prominent part of the national law enforcement agenda, said the pursuit of child predators depends on the availability of evidence often in the hands of ISPs.

This wasn't the first time Gonzales has gone to Internet companies with a request related to their records. In March, a federal judge ordered Google to hand over Web search records requested by Justice as part of its efforts to shield children from sexually explicit material online. Google balked at an earlier request, saying it would expose trade secrets. AOL, Yahoo and Microsoft cooperated with the government, but they said their assistance was limited and users' privacy was not violated. Reported in: *USA Today*, June 1.

Washington, D.C.

A prominent Republican on Capitol Hill has prepared legislation that would rewrite Internet privacy rules by requiring that logs of Americans' online activities be stored. The proposal came just weeks after Attorney General Alberto Gonzales said Internet service providers should retain records of user activities for a "reasonable amount of time," a move that represented a dramatic shift in the Bush administration's views on privacy.

Wisconsin Rep. F. James Sensenbrenner, the chairman of the House Judiciary Committee, is proposing that ISPs be required to record information about Americans' online activities so that police can more easily "conduct criminal investigations." Executives at companies that fail to comply would be fined and imprisoned for up to one year.

In addition, Sensenbrenner's legislation would create a federal felony targeted at bloggers, search engines, e-mail service providers and many other Web sites. It's aimed at any site that might have "reason to believe" it facilitates access to child pornography—through hyperlinks or a discussion forum, for instance.

Speaking to the National Center for Missing and Exploited Children last month, Gonzales warned of the dangers of pedophiles using the Internet anonymously and called for new laws from Congress. "At the most basic level, the Internet is used as a tool for sending and receiving large amounts of child pornography on a relatively anonymous basis," Gonzales said.

Until Gonzales' speech, the Bush administration had explicitly opposed laws requiring data retention, saying it had "serious reservations" about them. But after the European Parliament last December approved such a requirement for Internet, telephone and voice over Internet Protocol (VoIP) providers, top administration officials began talking about it more favorably.

The drafting of the data-retention proposal came as Republicans were trying to do more to please their conservative supporters before the November election. One bill announced last week targets MySpace.com and other social networking sites.

Sensenbrenner's proposal is likely to be controversial. It would substantially alter U.S. laws dealing with privacy protection of Americans' Web surfing habits and is sure to alarm Internet businesses that could be at risk for linking to illicit Web sites.

Marc Rotenberg, executive director of the Electronic Privacy Information Center in Washington, called Sensenbrenner's measure an "open-ended obligation to collect information about all customers for all purposes. It opens the door to government fishing expeditions and unbounded data mining."

The National Security Agency has engaged in extensive data-mining about Americans' phone calling habits, *USA Today* reported, a revelation that could complicate Republicans' efforts to enact laws relating to mandatory data retention and data mining. Sen. John Sununu, a New Hampshire Republican, for instance, took a swipe at the program and Democrats have been calling for a formal investigation.

One unusual aspect of Sensenbrenner's legislation—called the Internet Stopping Adults Facilitating the Exploitation of Today's Youth Act, or Internet Safety Act—is that it's relatively vague. Instead of describing exactly what information Internet providers would be required to retain about their users, the Internet Safety Act gives the attorney general broad discretion in drafting regulations. At minimum, the proposal says, user names, physical addresses, Internet Protocol addresses and subscribers' phone numbers must be retained.

That generous wording could permit Gonzales to order Internet providers to retain records of e-mail correspondents, Web pages visited, and even the contents of communications.

"In the absence of clear privacy safeguards, Congress would be wise to remove this provision," Rotenberg said.

Sonia Arrison, director of technology studies at the free-market Pacific Research Institute in San Francisco, said the Internet Safety Act "follows in a long line of bad laws that are written in the name of protecting children."

Complicating the outlook for the Internet Safety Act is the uncertain political terrain of Capitol Hill. Rep. Diana DeGette, a Colorado Democrat, announced legislation last month—which could be appended to a telecommunications

bill—that would require Internet providers to store records that would permit police to identify each user.

The head of the Energy and Commerce Committee, Rep. Joe Barton of Texas, has expressed support for DeGette's plan. That could lead to a renewal of a turf battle between the two committees, one of which has jurisdiction over Internet providers, while the other is responsible for federal criminal law.

"We're still evaluating things," said Terry Lane, a spokesman for the House Energy and Commerce Committee. "We haven't really laid out exactly yet what kind of proposals we would support and what kind of proposals would be necessary."

At the moment, ISPs typically discard any log file that's no longer required for business reasons such as network monitoring, fraud prevention or billing disputes. Companies do, however, alter that general rule when contacted by police performing an investigation—a practice called data preservation.

A 1996 federal law called the Electronic Communication Transactional Records Act regulates data preservation. It requires Internet providers to retain any "record" in their possession for ninety days "upon the request of a governmental entity."

In addition, ISPs are required by another federal law to report child pornography sightings to the National Center for Missing and Exploited Children, which is in turn charged with forwarding that report to the appropriate police agency.

When adopting its data retention rules, the European Parliament approved U.K.-backed requirements saying that communications providers in its twenty-five member countries—several of which had enacted their own data retention laws already—must retain customer data for a minimum of six months and a maximum of two years.

The Europe-wide requirement applies to a wide variety of "traffic" and "location" data, including the identities of the customers' correspondents; the date, time and duration of phone calls, voice over Internet Protocol calls, or e-mail messages; and the location of the device used for the communications. But the "content" of the communications is not supposed to be retained. The rules are expected to take effect in 2008.

According to a memo accompanying the proposed rules European politicians approved the rules, because not all operators of Internet and communications services were storing information about citizens' activities to the extent necessary for law enforcement and national security.

In addition to mandating data retention for ISPs and liability for Web site operators, Sensenbrenner's Internet Safety Act also would:

- Make it a crime for financial institutions to "facilitate access" to child pornography, for instance by processing credit card payments.
- Increase penalties for registered sex offenders who commit another felony involving a child.
- Create an Office on Sexual Violence and Crimes against Children inside the Justice Department.

Reported in: news.com, May 16.

telecommunications

Washington, D.C.

The American Civil Liberties Union said May 24 that it was asking utility commissions in twenty-one states to investigate whether the country's largest phone companies handed over their customer records to the National Security Agency without warrants.

The ACLU is approaching the state commissions because they often monitor the privacy and abuse of customer data. The group said it also hoped to clarify whether local as well as long-distance calls had been monitored.

The civil liberties union also created a Web site and bought advertisements in newspapers to encourage the public to join complaints being sent to state regulators and the Federal Communications Commission.

"The likelihood of further public hearings will increase when more requests to investigate are made," said Anthony D. Romero, the executive director of the ACLU "The companies have a major problem on their hands trying to explain why they violated consumer protections."

The action followed a report in *USA Today* that AT&T, Verizon and BellSouth had provided the National Security Agency with records on millions of Americans in surveillance after September 11. BellSouth has denied the report, as has Verizon, at least in part. AT&T has not commented, beyond affirming its privacy policies.

On May 22, Kevin J. Martin, the FCC chairman, sent a letter to Representative Edward J. Markey, Democrat of Massachusetts, saying that the commission was unable to investigate the report because the security agency's activities are classified. Markey is the ranking minority member of the House Subcommittee on Telecommunications and the Internet.

The ACLU has filed complaints with state utility commissions in Arizona, Colorado, Connecticut, Delaware, Florida, Iowa, Kansas, Maine, Massachusetts, Missouri, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia and Washington. Reported in: *New York Times*, May 25.

New York, New York

Two New Jersey public interest lawyers sued Verizon Communications, Inc., for $5 billion May 12, claiming the

(continued on page 213)

libraries

Miami, Florida

School officials have ruled that a children's book about traveling to Cuba should remain in Miami-Dade County schools, despite a parent's complaint that the book does not depict an accurate life in Cuba. The Miami-Dade School Board voted 6–3 April 18 against removing the Spanish-language book, *Vamos a Cuba* or *A Visit to Cuba* from library shelves. The book, by Alta Schreier, contains images of smiling children wearing uniforms of Cuba's Communist youth group and a carnival celebrating the Cuban revolution of 1959.

"I am not willing to spend a quarter of a million dollars on money that should be spent in the classroom to litigate an issue that is well-established in the law of this country," board member Evelyn Greer said.

Fellow board member Frank Bolanos said the book violates district standards. "It is full of biases, prejudices, distortions and stereotypes," he said. Marta Perez also voted to remove the book. She compared it to "pornography" and "books about devil worship," which she said would not appear in any school library.

The decision can be appealed to a seventeen-member committee appointed by Superintendent Rudy Crew.

The issue surfaced earlier in April when a parent at Marjory Stoneman Douglas Elementary complained about its depiction of Cuba under Fidel Castro. Juan Amador, an immigrant from Cuba, said he finds the material to be untruthful and it exemplifies a Cuba "that does not exist." His son, Juan Amador Rodriguez, spoke through a translator at the board meeting about his experience of growing up in Cuba. "The smile on the faces of those children, I never had," Rodriguez said. Reported in: *Bradenton Herald*, April 19.

Suwanee, Georgia

The Gwinnett County school board voted May 11 to reject a parent's pleas to take Harry Potter books out of school libraries, based on a claim they promote witchcraft. "At the very heart of this issue is censorship," board member Carole Boyce said before the unanimous vote. "Our students do understand the difference between fact and fiction."

Laura Mallory of Loganville, who has three children in a Gwinnett elementary school, asked the state's largest school district to ban the books. Mallory said she had not decided whether to appeal the board's decision.

"I knew what they were going to do, but it's good we live in a country where you can stand up for what you believe in," said Mallory, a former missionary. "God is alive and real and he says it (witchcraft) is an abomination. How can we say it is good reading material?"

Mallory filed her complaint against *Harry Potter and the Sorcerer's Stone* in September. A media review panel composed of parents, teachers and community members at J. C. Magill Elementary, where her three children are in school, rejected the complaint. The panel was backed up by the school district administrators.

Board member Mary Kay Murphy, a former English teacher, said the books help students develop the critical thinking skills they need to be successful in high school, college and life.

"I support the value of the Harry Potter books to develop children's imagination and ability to read," she said.

Advocates and opponents of the series clashed at a public hearing held on April 20. While Mallory and several others argued that the books encourage witchcraft, casting spells and demonic activity, Harry Potter supporters said they promoted positive themes and encouraged kids to read books cover to cover.

"I want to protect children from evil, not fill their minds with it" Mallory said at the hearing. "The *Harry Potter* books teach children and adults that witchcraft is OK for children."

School board members disagreed on the relative merits of the books, but the board voted unanimously that they should stay. District 2 Representative Daniel Seckinger and Chairman Robert McClure said they had not made their decision because it was the popular one or because the books encouraged kids to read. Their main priority was whether the books were appropriate for students. They also

said the fact that Mallory had not read the book series was not a consideration in their decision.

"It really is irrelevant if the person has read the whole book or not, if there is one section that is obscene" McClure said. "Our process does pre-suppose that one person could be right and a lot of other people could be wrong."

Board member Mary Kay Murphy, a former English teacher, said she thought the books were a great way of teaching children critical reading through the use of allegories, irony and parables. "I support the value of the 'Harry Potter' books to develop children's imaginations and ability to read on several levels, including analogy. And I will support keeping the books in the schools' media centers," Murphy said.

Hearing officer SuEllen Bray had strongly recommended to the board that the books not be removed, based on testimony gathered at the public hearing. Part of her reasoning was that the series was fantasy, not fact, and that most kids old enough to read the books would understand that.

The book appeal attracted international attention to Gwinnett County schools, primarily through postings on blogs and online message boards. Bray wrote that removing the books based on Mallory's arguments "would open this very fine school system to ridicule by many of its citizens as well as citizens of the nation."

By allowing the books to remain, the school board followed its precedent of upholding the decisions made by school system committees.

In the past two book appeals in 1997, the board agreed with the committees that books by R. L. Stine and Judy Blume should stay on shelves. Reported in: *Columbus Ledger-Enquirer*, May 12; *Gwinnett Daily Post*, May 12.

Apple Valley, Minnesota

Denny Thurman never contacted his son, Matt, until he needed money for his gambling addiction. With a gun in hand, Thurman devised a plan to kidnap the kindergartner for ransom money. His plan: take Matt's terrier, Pookie, to lure the boy away.

The father and son are fictional characters. But for at least one Apple Valley parent Peg Kehret's mystery novel *Abduction!* is too close to reality.

An eleven-member advisory committee of parents, teachers and librarians voted unanimously May 18 to keep *Abduction*! despite Shiuvan Harris' testimony that it was too violent. Harris had filed papers to have the book pulled from the shelves of two middle- and eight elementary-school libraries.

Harris didn't allow her daughter, ten-year-old Coa Murrell, to finish reading *Abduction!* after she had checked it out from the Echo Park Elementary library in Burnsville. Harris said the book was too violent and made her daughter fearful. "This is something you would see on Lifetime TV or a movie rated PG-13," said Harris, who read the 215-page book. "As a parent, I want to be able to control what my children have access to."

Librarian Linda Carlson of Westview Elementary in Apple Valley said while parents should have control over what their children read, what one parent wants for her child should not be universal for all. She added that all books are carefully screened before a school purchases them.

Advisory committee member and parent Janet Westenberg shared Harris's concern, though she voted to keep *Abduction!* Westenberg, who doesn't allow her kids to view some Disney movies, said there must be a balance between access to information and appropriate library materials available to students.

Bill Allyson, another parent and committee member, agreed with Westenberg but said *Abduction!* also could be used as a teaching tool. Allyson's kids will read the book, he said.

Kehret, the author of the disputed book, said that if her book was too staid, readers wouldn't get the message: the potential danger of a stranger approaching a child. "What I object to is one parent trying to keep other people's kids from reading the book," said Kehret, whose book was nominated for a 2005 Edgar Allan Poe Award. "I'm a sixty-nine-year-old woman, grandmother and widow. What harm could I be?"

Toward the end of *Abduction!*, Matt's sister also is abducted. But the siblings are able to outsmart Thurman. Matt uses a ball to knock over Thurman when his sister yells, "Zinger," their code for "throw." Thurman drops a small handgun that his sister throws in the water before the two are rescued.

Harris acknowledged that no actual violence takes place in the book, but that the threat of it is still too much for young children. "Kids are like sponges," Harris said. "We have to help them find right and wrong." Reported in: *St. Paul Pioneer Press*, May 19.

Upper Arlington, Ohio

A library trustee in Columbus, Ohio, was rebuffed in his effort to remove gay newspapers from a public library in the suburb of Upper Arlington. Trustee Bryce Kurfees of the Upper Arlington Public Library Board tried to have *Outlook Weekly* and *Gay People's Chronicle* removed from the facility, calling their contents "garbage" and not suitable for young eyes.

"What is a publication that has this garbage within it doing in our library?" Kurfees said, according to minutes from the board meeting where the issue was discussed. "It's dropped off at our front door and we're bringing in into our library."

As a compromise, trustee Brian Perera introduced a resolution to have "certain free publications" removed from the lobby and placed in another location as a way to moni-

tor who reads them. The resolution defined the publications as free periodicals that library officials don't request or pay for.

But Perera withdrew his motion at the six-member board's March meeting. Last year, the two gay publications were moved near the reference desk.

Library director Ann Moore said it's within policy to provide a variety of materials that will appeal to everyone. "We provide an open forum for any material," Moore said. "We have so many publications that are brought to us."

Officials with the Ohio chapter of the ACLU had threatened to sue if the publications were removed from the Upper Arlington library. Reported in: *Washington Blade*, April 20.

Westerly, Rhode Island

The Phoenix stays, albeit out of reach for children and those height-challenged.

More than one hundred library staff, board members, supporters and state and national library officials filed into the second floor conference room of the Westerly library May 30 to hear what, if any, changes might be made to the library's policy concerning materials deemed "adult" in nature. The focus was the "adult" advertising supplement to the free alternative weekly newspaper, the *Providence Phoenix*—a section that includes ads for escort services and adult venues, and has been included in *The Phoenix* as it's offered at the library.

The meeting was scheduled to allow the Westerly Town Council and library officials to discuss the matter and "see what we can do and what we cannot do," according to Town Council President Samuel Azzinaro. The council told library officials recently about complaints from some community residents suggesting the *Phoenix* should be either removed or made inaccessible to children.

Azzinaro said there could be no public comment at the workshop, rather "we're here to straighten out any questions."

"We're not here to monitor the library in any way," said Town Councilor Mary Jane DiMaio. "What we were hoping was to act as a channel between you and citizens."

Town Councilor Diana Avedesian echoed that sentiment. This is an issue that's been coming to us over and over," she said. "We're not here to dictate what the library can or cannot do. You're in charge. We're not here to take over."

Both councilors and library officials agreed that the matter, which has simmered on and off since 2003, was not about censorship, but was rather about free material designed for adult readers being accessible to children. The library has moved the *Phoenix* to an upper shelf adjacent to the circulation desk, as was shown on a "tour" given by Library and Memorial Association Board president David Sayles. Sayles took the council and others through the library and showed officials where the publication is being placed. He said that the *Phoenix* adult ads were a library concern as well and the publication has been moved so as not to allow children access to it. That action fell far short of any measure of censorship, he said.

Library executive director Kathryn Taylor cited the American Library Association Code of Ethics: "We uphold the principles of intellectual freedom and resist all efforts to censor library resources." The *Phoenix* is one of those resources, she said.

But among the five town councilors who attended the meeting, there was consensus that the action to move the publication from the reach of the very young was largely sufficient to allay the concerns of a few troubled by the weekly paper's adult entertainment references.

"I don't know if I'd call it pornography," said Azzinaro. "It's writing for adults and not children. It's a little different having it here than at a variety store or newsstand . . . but here with children who come for their reading needs."

Taylor did say in her statement that she was concerned about any future requests to have publications removed from the library. "We have to wonder what we will be asked to remove next," she said.

But it was Town Councilor Michelle Buck, an attorney, who said she was addressing the issue also from an attorney's point of view. "I took an oath to uphold (the First Amendment)," she said. "I don't feel in any significant way that we're infringing on that by asking to have the *Phoenix* out of reach for children." Reported in: *Westerly Sun*, May 31.

schools

Manteca, California

East Union High School students should be allowed to read the original version of the controversial autobiography *Kaffir Boy* in a senior English class, a Manteca Unified School District instructional material review committee decided May 16. The committee's recommendation was set to go before the school board, along with an admonishment that the board didn't follow the district's complaint policy when asking the committee to determine if the original edition of the book was appropriate for the English class. An alternative, the author-edited version of the book, contains two paragraphs intentionally altered to make the original version's depiction of child prostitution less graphic.

School board members said they thought the book had been deemed inappropriate years before, and they fast-tracked the process to address an issue they thought already had been settled. But the review panel of thirteen district parents, administrators and teachers agreed *Kaffir Boy* is a relevant, authoritative book that promotes the educational goals of the school district.

The book, by Mark Mathabane, is an autobiographical coming-of-age tale set against a backdrop of crushing poverty in apartheid-era South Africa.

One committee member and East Union parent, Terri Campa, said she preferred offering the edited book. "In the revised edition, you get the same picture without the graphic description," she said. "Other parents might feel the same way." But after the vote, she said she supported the committee's recommendation.

The book's controversial passage uses the words "penis" and "anus" to describe a scene in which a group of young boys are about to prostitute themselves to a group of men for food. Mathabane does not take food or have sex with the men. He runs.

Heather Dragoo, the teacher of the East Union's multicultural English class, gives students ample chance to opt out of anything to which they or their parents might object, noted Kathy Griffin, committee member and librarian at August Knodt Elementary School. Dragoo should not have to change her classroom policies, the committee decided.

The school board and district administration took steps to remove the book from Manteca Unified schools three years ago, said committee member Bob Lee, director of secondary education. But any decision made then is clouded in confusion because of ambiguous meeting minutes, and employee turnover and transfers, he said.

Trustee Nancy Teicheira put the book back on the board's agenda in April. She said she had heard from three parents who, like her, thought the book had been banned three years ago. The board directed staff to launch the review committee to look at the book.

District policy calls on administrators to try to reach an informal resolution before a complainant can file a formal objection, which creates a reconsideration committee to review the class material in question. The committee accused the board of sidestepping this part of the policy.

Board President Dale Fritchen said the board streamlined the process because it addressed a years-old, unanswered question. The official objection form was filed by Assistant Superintendent of Educational Services Jason Messer, not the parents who objected to the book. It was wrong for the board to put Messer in this position, said Don Scholl, a committee member and East Union parent.

"Administrators were put in the role of advocates for the complainants," he said. Reported in: *Stockton Record*, May 17.

Arlington Heights, Illinois

Dozens of parents, teenagers, graduates, educators and ordinary residents—from Northwest Suburban High School District 214 and beyond—spoke for nearly five hours May 24 on the hottest debate to haunt the district's halls in decades: whether nine books on next year's reading lists should be tossed or treasured. Shortly after 1:30 a.m., board members voted 6–1 to approve the texts for 2006–07.

Leslie Pinney—the board member who started it all with a plea to yank books from the curriculum and replace them with books more suitable for teens— got her say about 1 a.m., when the horde had thinned to about seventy-five people. Pinney, elected to the board in 2005 amid promises to bring her Christian beliefs into all board decision-making, repeated her concern for the text, but said those who suggest she's trying to ban books are mischaracterizing her intentions.

"That is certainly not what I am suggesting," she said. Instead, she claimed, she simply wants the books off required reading lists. Years before she was a board member, she added, her own daughter went through Hersey High School and was exposed to "explicit, hot and steamy sex scenes" in books. She'd like to ensure students aren't forced to read that now.

Other board members, though, said they trust educators' curriculum decisions and believe that a classroom—a controlled environment with a teacher—is the perfect setting in which to divulge more lessons, even from disturbing book excerpts.

"Frankly, I place my trust in the staff," board member Bill Blaine said. "And based on the e-mails I've received, that trust is shared by most of the community."

A good chunk of the community came out for the session, and they came from all walks of life: retired teachers, long-ago departed graduates with graying hair, teens toting Bibles or wearing T-shirts admonishing censorship, a village president, a church minister and Christian conservative mothers who never thought they'd be urging support of sex scenes and swear words.

They waited hours to get their two-minute turn at the podium at Forest View Educational Center in Arlington Heights, cramming into the 350 seats set up for them and, when those were filled, flooding the gymnasium's bleachers.

Buffalo Grove Village President Elliott Hartstein was among those who came—and among the few stayed, bleary-eyed, until 1:30 a.m. "On the eve of Memorial Day weekend, we cannot forget that those men and women who put their lives on the line have fought for the freedoms we all cherish. Freedoms like the freedom of expression," he said. "I know we live in suburbia, but we don't live in a bubble."

Comments like his drew some applause and standing ovation, but the cheers rang out for both sides.

While Pinney did not draw support from fellow board members, she rallied it from Christian groups, plenty of parents who say they feel squeamish just looking at excerpts from the books, and at least some educators.

"I love books, but I don't feel all books should be taught in high school," said Amy Picchiotti, an Arlington Heights resident who taught English at Wheeling High School in the mid-1990s. "This is about choice."

But that choice already exists, some officials said: The district has a policy allowing teens or parents who feel

uncomfortable with any classroom material to opt out and get an alternative. Beyond that, they point out, some of the books are taught only as literary circle discussion books and many are used in junior- or senior-level elective courses.

The books Pinney's questioning are: Kate Chopin's 1899 classic *The Awakening*; the Vietnam War books *Fallen Angels*, by Walter Dean Myers, and *The Things They Carried*, by Tim O'Brien; Stephen Chbosky's teen angst tale *The Perks of Being a Wallflower*; the best-seller *Freakonomics*; Toni Morrison's *Beloved*; Kurt Vonnegut's *Slaughterhouse-Five*; *How the Garcia Girls Lost Their Accents*, by Julia Alvarez; and *The Botany of Desire: A Plant's-Eye View of the World*" which is being used only at Buffalo Grove High School next year.

Pinney based her original concerns on excerpts from the books she'd found on the Internet - at that point, she'd not read any of them, but she since has started that project. Many suggested it's dangerous to take any book at all—including the Bible—out of context and suggested Pinney had, in a sense, judged nine books by their covers.

"The mischaracterization of books is unfortunate," Superintendent David Schuler said before the public comment began. The books are "not about the excerpts. They are about war, and slavery . . . and economics."

Dozens of teens, who'd given up their Thursday night to be at a school board meeting debating literature, agreed with him, saying they'd already been exposed to most of the subjects in the books by the time they'd hit high school—"No matter how unfortunate that is, it's reality," Hersey High School junior Kathleen Dulkowski said—and aren't prone to becoming bad people simply because of reading some graphic literature.

Wallflower, which contains references to masturbation, homosexuality and bestiality, got the bulk of the criticism. Bruce Tincknell, a former Prospect High parent, read an excerpt from the book, omitting some terms he felt were too inappropriate. "This is unacceptable to many of us," he told those in the room. "We want better." Reported in: *Daily Herald*, May 25.

colleges and universities

South Bend, Indiana

The University of Notre Dame will continue to allow a gay film festival and the play "Vagina Monologues" on campus, its president announced April 5. The decision was a sharp turnaround from a speech that the president, the Rev. John I. Jenkins, gave to faculty members and students in January questioning the appropriateness of such events on a Roman Catholic campus.

In the speech, Father Jenkins said he objected to the "graphic descriptions" of sexual experiences in "The Vagina Monologues" and its portrayals of human sexuality outside traditional relationships between men and women. Conservative Catholics said the events, which have been held on campus for several years, contradicted church teachings on sexuality.

After hearing from hundreds of students, faculty members, alumni and administrators in the last ten weeks, Father Jenkins said he saw "no reason to prohibit performances of 'The Vagina Monologues' on campus." The gay film festival will also continue.

"I am very determined that we not suppress speech on this campus," Father Jenkins said in a statement. "I am also determined that we never suppress or neglect the Gospel that inspired this university."

Several Catholic universities have canceled the play or sent productions off campus in the last year.

Conservative Catholics criticized Father Jenkins's decision. Bishop John M. D'Arcy of the Fort Wayne-South Bend Diocese in Indiana said in a statement that he was "deeply saddened." William Donohue, president of the Catholic League for Religious and Civil Rights, wrote in an e-mail message that Father Jenkins's "statement is a strained and ultimately failed attempt to reconcile free speech rights with the mission of a Catholic institution."

Patrick J. Reilly, president of the Cardinal Newman Society, a conservative Catholic watchdog group, said: "Either he has radically changed his perspective on 'The Vagina Monologues' or he is entirely ignoring the Catholic identity of Notre Dame. In either case, it smacks of hypocrisy when he made such strong statements weeks ago and is not imposing any restrictions at all now."

Supporters of the play and the film festival in South Bend, said they were surprised by the reversal, given the strong disapproval Father Jenkins had voiced. "The decision shows a recognition that these events contribute to the faith life, spirituality and academic life of the university, that there is a lot of merit to them," said Kaitlyn Redfield, a senior who had until this year organized the staging of "The Vagina Monologues."

Father Jenkins saw "The Vagina Monologues" in mid-February, and he said that he still believed that the play's view of sexuality stood in opposition to the church's. He added that panel discussions after the play about its perspectives and Catholic traditions on sexuality were "serious and informed," and apparently put the play in a new light.

"If I didn't learn anything from all this," Father Jenkins said in a telephone interview, "I'd be very disappointed and surprised. What I learned was we do really need to find ways to advance discussion about issues that have to do with women." Reported in: *New York Times*, April 6.

Eugene, Oregon

Many a guest has Bill O'Reilly intimidated with his verbal jab-hook-uppercut combos. Dave Frohnmayer, presi-

dent of the University of Oregon, however, was neither a guest nor intimidated. Frohnmayer refused to cancel his appointments on short notice to drive 200 miles to Portland to appear on "The O'Reilly Factor" in May to discuss risqué cartoon depictions of Jesus.

The cartoons include one showing Jesus on the cross, with an erection, and another showing him kissing a naked man. Both ran in a March edition of *The Insurgent*, a progressive student publication. *The Insurgent* published the Jesus cartoons as a provocative response to *The Commentator*, a conservative student publication that ran the infamous Danish Muhammad cartoons, along with an editorial.

The furor was contained on campus, until "The Factor" got his hands on the cartoons and featured the hullabaloo on his show. O'Reilly called out Frohnmayer, saying he was afraid to come on the show, and added that "that man needs to be fired. . . The image of Jesus is disrespected in shocking ways."

Though Frohnmayer didn't appear on the show, which he called "entertainment," he didn't hold back in telling various publications his feelings about O'Reilly. "Being called names by him is like being called ugly by a frog," Frohnmayer told the Associated Press.

In response to O'Reilly's call for Frohnmayer to shut down *The Insurgent*—O'Reilly said that, because the publication is paid for by student activity fees, the university can shut it down—Frohnmayer told the *Oregon Daily Emerald* that "Bill O'Reilly doesn't know the First Amendment from the back of his own hand, which is a shame because he takes full abuse of it."

Shortly after *The Insurgent* published the cartoons, Frohnmayer wrote a letter to the *Emerald* saying that "our media should not focus on creating controversy for controversy's sake," and should instead "promote campus debate rather than making individuals feel that they or their beliefs are unwelcome and belittled."

Frohnmayer, in a statement, pointed out that there is no legal basis for him to censor *The Insurgent*, or to threaten to withdraw its funding. In 2000, in *University of Wisconsin System* v. *Southworth*, the Supreme Court ruled that student activity money is student money, not institutional money, and that it cannot be allocated to or removed from a publication based on content.

Greg Lukianoff, president of the Foundation for Individual Rights in Education, said that Frohnmayer handled the cartoon issue well, and added that cartoon debacles are hot this year.

One of O'Reilly's guests was Tyler Graf, former editor of *The Commentator*. Graf wrote a guest opinion piece for the *Emerald*, in which he said the cartoons "contained nothing resembling measured analysis or satirical wit," and called them "a sucker punch to Christianity." Graf added that the Muhammad cartoons in his publication, which were accompanied by an editorial that chastised President Bush and much of the American media for their hand-wringing approach to the Muhammad cartoons, were part of an effort to "put the controversy into context."

In a statement, Frohnmayer said that "the best response to offensive speech often is more speech." *The Insurgent* certainly thought so. Reported in: insidehighered.com, May 23.

etc.

St. Paul, Minnesota

David LaRochelle's award-winning novel about a gay teenager, *Absolutely, Positively Not*, was sold at this year's Twin Cities Young Writers Conference after being banned at last year's event. LaRochelle, who lives in White Bear Lake, said he was pleased that 3,000 students had an opportunity to look at his book during the conference for fourth- through eighth-graders at Bethel College in Arden Hills.

The book was a source of controversy earlier in May at a similar conference in Thief River Falls.

Absolutely, Positively Not was well-reviewed when it was published last year, and it earned several honors, including the Society of Children's Book Writers and Illustrators annual Sid Fleischman Humor Award. The forty-five-year-old author says young readers, parents and teachers have been supportive of his story about a young man who tries everything to convince himself he's not gay, including taking a dog to the prom.

LaRochelle's book was banned at last year's conference because Success Beyond the Classroom staff was under the mistaken impression Bethel does not allow sales of books about homosexuality. They discovered there was no such policy after getting press inquiries about LaRochelle and his book, which were passionately defended by Minneapolis author John Coy during the Young Authors Conference in Thief River Falls.

LaRochelle was invited to be a presenter at the conference, but his book was not welcome. That made the usually unflappable Coy furious. "If I'd known ahead of time that David's book wasn't accepted, I never would have attended," Coy said. "My prepared keynote speech about finding your voice didn't make much sense in light of banning David's voice. So, I talked to the 450 kids about how terrific David's book was and about banning books.

"The students were intrigued by the idea that they were going to be protected from a gay character," Coy said. "David's book is about a 16-year-old in a small town in Minnesota, and these are small-town kids. These conferences rely on presenters to come and talk with students about being a writer," he added. "To ask people to do that and then say, 'We don't want to have your book here, but don't talk about what we're doing' is a confusing message to youngsters."

Lloyd Styrwoll, executive director of the Northwest Service Cooperative, defended his decision to keep *Absolutely, Positively Not* out of the Thief River Falls conference, which his group organized. "I have spent thirty-five

years in public education, and the issue of appropriate media selection for age groups is not a new one to me," Styrwoll said. "These were fifth- to eighth-grade students . . . and one needs to exercise good judgment when dealing with the introduction of sensitive material to them. Mr. Coy might characterize our actions as book banning or, even worse, as an act of homophobia. The reality is that the only consideration was, is this appropriate subject matter for that age group? The overwhelming response from parents who filled out evaluations . . . was anger that Mr. Coy chose to hijack the conference for his own personal reasons."

The man at the center of this controversy, David LaRochelle, said he was not as upset as Coy about what happened at the Thief River conference, but he was disappointed his book was not there because he feels it was age-appropriate. "I experienced mixed feelings when John talked about my book in his speech," LaRochelle said. "I was awed by his courage in taking such a bold stance but also uncomfortable in some ways, because it wasn't the way I would have handled the situation. Then, I thought about how I handled my book not being allowed at the Bethel conference last year. I had expressed my disappointment privately and then continued attending the conference, which is the type of compliant person I am. But then, I wonder if that attitude ever changes anything. If John hadn't spoken out, my book wouldn't be available at Bethel this year." Reported in: *St. Paul Pioneer Press*, May 26. □

(is it legal . . . from page 206)

phone carrier violated privacy laws by turning over phone records to the National Security Agency for a secret government surveillance program.

Attorneys Bruce Afran and Carl Mayer filed the lawsuit in U.S. District Court in Manhattan, where Verizon is headquartered. The lawsuit asks the court to stop Verizon from turning over any more records to the NSA without a warrant or consent of the subscriber.

"This is the largest and most vast intrusion of civil liberties we've ever seen in the United States," Afran said of the NSA program.

USA Today reported May 11 that the NSA has been building a database of millions of Americans' everyday telephone calls since shortly after the September 11, 2001, attacks. Verizon, along with AT&T Corp. and BellSouth Corp., complied, the newspaper reported.

The lawsuit claims that by turning over the records to the government, Verizon violated the Telecommunications Act and the Constitution.

"No warrants have been issued for the disclosure of such information, no suspicion of terrorist activity or other criminal activity has been alleged against the subscribers," the lawsuit said.

Verizon, the country's largest telecommunications company by revenue, said in a statement that the company had not yet seen the lawsuit and, because of that, believed it was premature to comment.

The lawsuit seeks $1,000 for each violation of the Telecommunications Act, or $5 billion if the case is certified as class-action. Afran said that he and Mayer will also ask for documents dealing with the origination of the program and President Bush's role in the program. Reported in: *San Jose Mercury-News*, May 12.

broadcasting

Washington, D.C.

After years of coming under assault in Washington on accusations of indecent programming, the television networks have decided to fight back. With no allies among either the Democrats or the Republicans on the Federal Communications Commission nor any significant ones in Congress, the four broadcast networks, joined by the Hearst-Argyle Television group of stations, embarked on a low-risk strategy of turning to the courts. There, they are hoping to find a solid majority—perhaps ultimately on the Supreme Court—of liberal and libertarian judges who are more sympathetic to their First Amendment arguments.

But the fight is certain to take more than a year, and in the meantime, the networks can expect to face a hostile commission and Congress, and an uncertain environment for challenging the rules with new and risqué programs. The regulators and lawmakers have been lobbied hard by some advocacy groups that generated hundreds of thousands of complaints about programs with coarse language and explicit themes.

In April, the networks filed lawsuits in federal appeals courts in Washington and New York to challenge indecency rulings against CBS, ABC and Fox involving coarse language. The rulings they are seeking to overturn involve obscenities that were used on the CBS news program *The Early Show*, *Billboard Music Awards* on Fox and *N.Y.P.D. Blue* on ABC. The networks maintained that many of the remarks that were found to have violated the indecency rules were blurted out spontaneously, although the ones at issue in *N.Y.P.D. Blue* had been scripted.

"The FCC overstepped its authority," the networks said in a joint statement, "in an attempt to regulate content protected by the First Amendment, acted arbitrary and failed to provide broadcasters with a clear and consistent standard for determining what content the government intends to penalize."

NBC joined the lawsuits, although they do not challenge sanctions against any of its programs. The network, a unit of General Electric, has been seeking a reversal of a complaint against it by the FCC for an obscenity uttered by the U2

singer Bono during the Golden Globe Awards ceremony three years ago.

The lawsuits were filed a month after the commission issued about $4 million in fines, the first indecency actions under the leadership of the agency's new chairman, Kevin J. Martin. Those fines included a record $3.6 million against 111 television stations that broadcast an episode of "Without a Trace," a CBS program, in 2004. The agency said the show suggested that its teenage characters were participating in a sexual orgy.

The networks are hoping that short of an outright victory, the lawsuits can at the very least result in differing opinions in different appeals courts, the kind of split that could attract the attention of the Supreme Court.

The networks are certain to make the case that the indecency rules are no longer relevant in a world where most viewers receive paid programs from cable and satellite television services, along with a proliferation of offerings from the Internet, that are accorded significantly more First Amendment protection.

"One of the strongest arguments for the networks is the changed circumstances and the pervasive availability of this programming on cable and the Internet," said Bruce W. Sanford, a partner at the law firm of Baker Hostetler who has represented the networks in other indecency cases but is not involved in those filed last week. "It makes the FCC's claims almost quaint."

Sanford said that another strong argument for the networks would be the inconsistent nature by which the FCC has applied the obscenity rules—in some cases imposing fines and in others finding violations but not imposing penalties.

"The decisions have been so arbitrary and left the networks without any straight, bright lines," he said.

Commission officials said, however, that a line of Supreme Court decisions going back to the "seven dirty words" indecency case involving the comedian George Carlin and subsequent federal court decisions give the agency the authority to regulate the content of programs broadcast over the public airwaves. They said FCC indecency rulings were consistent and tailored to the set of circumstances of each case. They also said they would review a request by CBS to reconsider their March ruling on the show "Without a Trace," although there is virtually no chance of the commission's changing its mind.

According to an agency spokeswoman, Tamara Lipper, the episode of 'Without a Trace' that the commission found to be indecent "depicts a teen orgy as well as a teenage girl straddling and apparently engaging in intercourse with one boy while two others kissed her breast."

In addition, she said: "In its recent order, the commission again rejected CBS's argument that the broadcast of the Super Bowl XXXVIII halftime show was not indecent. That argument runs counter to commission precedent and common sense. The commission, however, will review any request for reconsideration." The halftime show, in February 2005, became a subject of controversy after the singer Janet Jackson's breast was briefly exposed.

The Parents Television Council, an organization that has lobbied for more stringent penalties on obscene programs, denounced the lawsuits. "The broadcast networks are spitting in the faces of millions of Americans by saying they should be allowed to air the f-word and s-word on television," said L. Brent Bozell, III, the president of the council. "This suggestion by the networks is utterly shameless." Reported in: *New York Times*, April 17.

Washington, D.C.

As expected, the FCC denied CBS's challenge to the commission's $550,000 fine of the CBS stations for broadcasting the 2004 Janet Jackson Super Bowl halftime breast exposure, rejecting CBS's assertion that the broadcast was not indecent.

CBS' response, essentially, was: "See you in court."

"The Commission affirms its finding that CBS' violation was willful and declines to reduce the forfeiture imposed upon CBS," the FCC said in a statement. "Finally, the Commission rejects CBS's argument that the FCC's indecency framework is unconstitutionally vague and overbroad, both on its face and as applied to the halftime show."

CBS, which has now exhausted the appeals process and can take the decision to court if it chooses, intimated that course of action in its statement: "CBS has apologized to the American people many times for the inappropriate and unexpected half-time incident during the 2004 Super Bowl," the network said, "and we have taken steps to make certain it will never happen again. But we continue to disagree with the FCC's finding that the broadcast was legally indecent. We will continue to pursue all remedies necessary to affirm our legal rights, and so today's decision by the FCC is just another step in that process." Reported in: *Broadcasting & Cable*, May 31.

access to information

Washington, D.C.

The National Archives signed a secret agreement in 2001 with the Central Intelligence Agency permitting the spy agency to withdraw from public access records it considered to have been improperly declassified, the head of the archives, Allen Weinstein, disclosed April 17. Weinstein, who began work as archivist of the United States last year, said he learned of the agreement with the CIA three days earlier and was putting a stop to such secret reclassification arrangements, which he described as incompatible with the mission of the archives.

Like a similar 2002 agreement with the Air Force that was made public the previous week, the CIA arrangement required that archives employees not reveal to researchers why documents they requested were being withheld.

The disclosure of the secret agreements provides at least a partial explanation for the removal since 1999 of more than fifty-five thousand pages of historical documents from access to researchers at the archives. The removal of documents, including many dating to the 1950s, was discovered by a group of historians earlier this year. The reclassification program has drawn protests from many historians and several members of Congress, notably Representative Christopher Shays, the Connecticut Republican who held a hearing on the program in March.

The National Archives, with facilities in College Park, Maryland, at the presidential libraries and in other locations, are the repository of most official government documents and a major resource for historians.

"Classified agreements are the antithesis of our reason for being," Weinstein said in a statement. "Our focus is on the preservation of records and ensuring their availability to the American public, while at the same time fulfilling the people's expectation that we will properly safeguard the classified records entrusted to our custody."

Weinstein said he was particularly disturbed that the archives had agreed not to tell researchers why documents were unavailable. The CIA agreement said archives employees would "not attribute to CIA any part of the review or the withholding of documents." In the agreement with the Air Force, archives officials said they would "not disclose the true reason for the presence" of Air Force personnel at the archives.

Weinstein said he would not permit such agreements in the future. If the withdrawal of previously declassified documents becomes necessary, he said, it will be conducted "with transparency," including disclosure of the number of documents removed.

Asked about Weinstein's statement, Paul Gimigliano, a CIA spokesman, said, "Working very closely over the years with the National Archives, CIA's goal has been to ensure the greatest possible public access to material that has been properly declassified." CIA officials have said the reclassification work was necessary because other agencies, including the State Department, released material about intelligence activities without giving the agency a chance to review it.

Thomas S. Blanton, director of the private National Security Archive at George Washington University, praised Weinstein's actions. "He's doing the right thing, no more secret agreements to classify open files," said Blanton, whose group helped uncover the reclassification program. "The National Archives aided and abetted a covert operation to lie to researchers and white-out history."

Matthew M. Aid, a Washington historian who discovered in December that documents he obtained years ago had been removed from open shelves, said he was "saddened" by the revelation that archives officials had agreed to hide the reclassification program. "I still don't understand why this all had to be done in secret," Aid said.

John W. Carlin, Weinstein's predecessor as head of the archives from 1995 to 2005, said in a statement that he knew nothing about the reclassification program and was "shocked" to learn the contents of the secret agreements signed when he was in office. Reported in: *New York Times*, April 18. □

(censorship dateline . . . from page 190)

official at Belmont. Hobbs announced his resignation just days after *The Nashville Scene* published an article detailing a satirical cartoon contest he started (and abandoned) amid the furor over the Danish cartoons mocking Muhammad.

In his contest, since removed by Hobbs, but reproduced in the *Scene* article, a stick figure of Muhammad appears with a bomb and the caption "Muhammad Blows." Readers were invited to "exercise your right to free expression by drawing pictures of Islam's 'Prophet Muhammad' before the West gives in to Islamist intimidation and fear of Islamist violence and makes it illegal to do so."

The contest by Hobbs never took off, and the Tennessee blogging world is full of suggestions that the cartoons were publicized last week as part of various political machinations in the state having nothing to do with Belmont University. But Hobbs was repeatedly identified as an official of Belmont. To date, several American colleges—among them Century College of Minnesota, New York University and the University of Illinois at Urbana-Champaign—have found themselves caught up in controversies over the Danish cartoons and how to respond to them, but no one besides Hobbs has lost a job.

Hobbs announced his resignation from Belmont in a posting on another blog in which he said that his departure was a "mutual" decision and praised the university. But many commenters there and elsewhere criticized the university for not sticking up for Hobbs. His departure from Belmont is being called McCarthyite, "a travesty of justice," and evidence that "the barbarians are truly at the gate."

Jason Rogers, vice president for administration and university counsel at Belmont, said of criticism that the university's handling of the situation conflicted with free expression: "The university is committed to freedom of expression. This particular situation isn't about freedom of expression. It's about a personnel matter." Reported in; insidehighered.com, April 18.

periodicals

Washington, D.C.

Foreign Affairs, the *Economist*, and *U.S.News & World Report* are titles you'd expect to see at the two State

Department newsstands visited by the public, employees, and their kids, but *Playboy* and *Penthouse*? Yikes! Or so thought Condoleezza Rice a while back when she began receiving briefings in Foggy Bottom before her confirmation hearings as secretary of state. Alerted by an aide that the skin magazines, partially clad in brown paper covers, were placed beside newsmagazines and close to candy, nuts, and stuffed animals, she said, "I want them out."

A few weeks later, when she took over from Colin Powell, the eviction began. "The secretary wanted them gone immediately," said senior adviser Jim Wilkinson." She didn't understand how a department that claimed to fight for the rights of women worldwide could sell pornography that degrades women." And, he added, the magazines "could be seen as contributing to a hostile work environment." He teamed with State's internal manager and several State women who had been campaigning against the publications but had gotten nowhere. Now that they have succeeded, some of those women are eyeing other lad mags like *Maxim* and *FHM*. But State News's Richard Williams isn't listening. It was no problem banning the XXX fare: It didn't move very fast. "But *Maxim*," he says, "is a bestseller." Reported in: *U.S. News and World Report*, April 10.

Washington, D.C.

Rekindling a controversy that many academics thought had ended more than a year ago, a scientific publisher has rejected two papers because of their authors' connections to Iran. The American Association of Petroleum Geologists turned down the manuscripts submitted to its *AAPG Bulletin* because, in one case, an author worked for the National Iranian Oil Company, and in the other, the paper's authors in Norway had received data from the Iranian oil company.

The association cited a U.S. Treasury Department ruling, released in December 2004, that allows American publishers to edit and publish papers by authors in certain countries under a trade embargo, including Iran, but not if the authors are part of that country's government. The association rejected the two papers in separate letters dated January 31, 2006, that cited the restriction and said, "Your paper is interesting and well written."

"We like to say that geology knows no borders," Richard D. Fritz, the association's executive director, said this week. "But we also have to live within the laws of our government."

Others believe the geologists are being overly cautious. "The regulations only prohibit the publication of new works by the government of Iran," said Linda Steinman, a lawyer in the New York City office of Davis Wright Tremaine. "I personally do not believe that would extend to members of industry or authors who use data from an industry," she said, even if it is state-owned.

The Treasury Department rule, which also covers Cuba and Sudan, defines "government of Iran" to mean "the state and the government of Iran, as well as any political subdivision, agency, or instrumentality thereof, which includes the Central Bank of Islamic Republic of Iran; and any person acting or purporting to act directly or indirectly on behalf of any of the foregoing . . ."

Craig Blackstock, the association's lawyer, said it was concerned about "what makes the government of Iran a party to the transaction." Just using the national oil company's data may do so, he said. The association will seek clarification from the Treasury Department to find out if that interpretation is correct, he said.

One critic called the association a "coward." Marc H. Brodsky, who is executive director of the American Institute of Physics and chairman of the Professional and Scholarly Publishing Division of the Association of American Publishers, accused the geologists' association of being "completely in violation of the traditions of freedom of press in the United States."

The publishing division led by Brodsky and three other publishing groups sued the government in September 2004, citing the First Amendment, over the regulations, which were then in flux. Steinman represents them in the lawsuit. The publishers did not drop the lawsuit after the December 2004 determination reversed earlier, more-restrictive rulings. The publishers are now negotiating the wording of a new regulation with the government, according to Brodsky. Reported in: *Chronicle of Higher Education* online, April 20.

New York, New York

The Borders and Waldenbooks stores declined to stock the April-May issue of the magazine *Free Inquiry* because it included four of the cartoons of the Prophet Muhammad printed last year in a Danish newspaper. The cartoons prompted condemnation and sometimes violent demonstrations by Muslims around the world. "For us, the safety and security of our customers and employees is a top priority, and we believe that carrying this issue could challenge that priority," said Beth Bingham, a spokeswoman for the Borders Group, which operates both chains.

Among the cartoons in the magazine, published by the Council for Secular Humanism, an organization in Amherst, N.Y., is one depicting Muhammad wearing a bomb-shaped turban with a lighted fuse. Paul Kurtz, the editor of *Free Inquiry*, said, "To refuse to distribute a publication because of fear of vigilante violence is to undermine freedom of press—so vital for our democracy." Reported in: *New York Times*, April 1.

foreign

Nassau, Bahamas

Brokeback Mountain has been banned from theaters in the Bahamas. The Bahamian Plays and Films Control Board said the film showed "extreme homosexuality, nudity and

profanity" and had "no value for the Bahamian public." Erin Greene, a spokeswoman for the gay rights group Rainbow Alliance of the Bahamas, called the ban "an attempt to censor an entire community, the gay community, in the democratic Bahamas." Noting that the film is widely available in the Bahamas on DVD and video, she called the prohibition "a farce." Newspapers and radio stations have also criticized the ban. Reported in: *New York Times*, April 1. □

(Connecticut librarians . . . from page 173)

libraries in central Connecticut—is the John Doe plaintiff in *Doe* v. *Gonzales*. Christian was joined by fellow "Doe" plaintiffs Barbara Bailey, Library Connection board president and director of the Welles-Turner Memorial Library in Glastonbury; Vice-president Peter Chase, director of the Plainville Public Library; and Secretary Janet Nocek, Portland Library director.

"Until this point, I never thought about what it would be like to have the right to speak freely taken away," said Nocek, noting that the gag order meant "we were even taking a risk by consulting with lawyers." According to the plaintiffs' original complaint, which is available in redacted form on the ACLU website, the FBI agent assigned to serving the NSL instructed a Library Connection official to have his attorney call the agent when the librarian indicated a desire to consult a lawyer.

Chase told of his frustration at receiving the NSL even as "the government was telling Congress that it didn't use the PATRIOT Act against libraries and that no one's rights had been violated. I felt that I just could not be part of this fraud being foisted on our nation. We had to defend our patrons and ourselves, and so, represented by the ACLU, we filed a lawsuit challenging the government's power to demand these records without a court order."

"Because of the gag," Bailey said, "the government would not even allow us to attend the hearing in our case anonymously." Instead, the four "Does" watched the Bridgeport court proceedings on closed-circuit television in the Hartford federal building in August 2005. Ultimately, she added, "Due to some sloppy redacting on the government's part, our identity was eventually revealed to those who took the time to plow through the court briefs."

The result proved even more awkward: The Justice Department remained adamant that the gag order was still in effect for national security reasons—a position DOJ attorneys maintained until after President Bush signed into law the reauthorized PATRIOT Act, which eases some of the original restrictions. In the meantime, Bailey had declined to accept the Connecticut Library Association's intellectual freedom award on behalf of John Doe, and Chase, who chairs CLA's Intellectual Freedom Committee, turned down numerous invitations to speak about the PATRIOT Act lest he "inadvertently reveal that I was a John Doe." In one case, Chase refused to debate federal attorney Kevin O'Connor, whom Chase described as "traveling around the state telling people that their library records were safe, while at the same time he was enforcing a gag order preventing me from telling people that their library records were not safe."

The press conference, which was held four days after a federal appeals court declared the gag order moot, may be the first of many public appearances for the four. The board's lawsuit challenging the constitutionality of using an NSL to obtain library records has yet to be heard. "We are in the process of discussing how to proceed from here with our attorneys at the ACLU," Christian said, explaining that the group could not address any specifics because "we have only been ungagged to the extent that we can claim we received the NSL."

Partly because of the attention the Connecticut case has drawn, the revised PATRIOT Act does make it clearer that recipients of National Security Letters can consult lawyers. But lawyers for the American Civil Liberties Union, which took the case free of charge, said the law still has many defects.

Ann Beeson, a Civil Liberties Union lawyer, said she was dismayed that even though the identity of the Connecticut librarians had been widely suspected since last fall, when news organizations, starting with the *New York Times,* disclosed their identities, the government was willing to drop its appeal only after the anti-terrorism act was reauthorized by Congress.

In a telephone interview, Kevin O'Connor, the United States attorney for Connecticut, said Beeson was right on the timing but wrong about the government's motives. He said his office did not have the discretion to inform a recipient of a National Security Letter that the non-disclosure order was being waived until Congress changed the law in March.

From the roughly thirty thousand National Security Letters estimated to be issued a year, Christian was a surprising name to have emerged as the person who brought one of the only known challenges to the law. Though he was a conscientious objector in the Vietnam War, he has not been overly political since then. And unlike his co-plaintiffs whose backgrounds are in library science, his is in computer development. He said he was not even sure whether he would call himself a librarian.

To which Nocek said she thought by now he probably deserved an honorary degree.

ALA President-Elect Leslie Burger officially thanked Library Connection on behalf of America's library users for their "bravery and patriotism" in fighting the government's order and expressed regret that Library Connection was barred from speaking to Congress about the USA PATRIOT Act before the law was renewed earlier this year.

"In the course of the very important debate over renewal of the PATRIOT Act, our elected officials should have had access to Library Connection's testimony," she said. "The fact that Congress did not get to hear your account of the

impact of Section 505 of the PATRIOT Act on librarians and library users means that they were not as fully informed as they deserved to be."

Burger concluded the press conference by expressing the hope that "the stand Library Connection has taken on behalf of the library community will help lead the way to laws that better reflect what this country stands for."Reported in: *American Libraries Online*, June 2; *New York Times*, May 31. □

(scientists . . . from page 177)

but "purged key words from the releases, including 'global warming,' 'warming climate' and 'climate change.'"

Administration officials said they are following long-standing policies that were not enforced in the past. Kent Laborde, a NOAA public affairs officer who flew to Boulder in March to monitor an interview Tans did with a film crew from the BBC, said he was helping facilitate meetings between scientists and journalists.

"We've always had the policy, it just hasn't been enforced," Laborde said. "It's important that the leadership knows something is coming out in the media, because it has a huge impact. The leadership needs to know the tenor or the tone of what we expect to be printed or broadcast."

Several times, however, agency officials have tried to alter what these scientists tell the media. When Tans was helping to organize the Seventh International Carbon Dioxide Conference near Boulder last fall, his lab director told him participants could not use the term "climate change" in conference paper titles and abstracts. Tans and others disregarded that advice.

None of the scientists said political appointees had influenced their research on climate change or disciplined them for questioning the administration. Several researchers have received bigger budgets in recent years because President Bush has focused on studying global warming rather than curbing greenhouse gases. NOAA's budget for climate research and services is now $250 million, up from $241 million in 2004.

The assertion that climate scientists are being censored first surfaced in January when James Hansen, who directs NASA's Goddard Institute for Space Studies, told the *New York Times* and the *Washington Post* that the administration sought to muzzle him after he gave a lecture in December calling for cuts in emissions of carbon dioxide and other greenhouse gases. (NASA Administrator Michael Griffin issued new rules recently that make clear that its scientists are free to talk to members of the media about their scientific findings, including personal interpretations.)

Two weeks later, Hansen suggested to an audience at the New School University in New York that his counterparts at NOAA were experiencing even more severe censorship. "It seems more like Nazi Germany or the Soviet Union than the United States," he told the crowd.

NOAA Administrator Conrad Lautenbacher responded by sending an agency-wide e-mail that said he is "a strong believer in open, peer-reviewed science as well as the right and duty of scientists to seek the truth and to provide the best scientific advice possible."

"I encourage our scientists to speak freely and openly," he added. "We ask only that you specify when you are communicating personal views and when you are characterizing your work as part of your specific contribution to NOAA's mission."

NOAA scientists, however, cited repeated instances in which the administration played down the threat of climate change in their documents and news releases. Although Bush and his top advisers have said that Earth is warming and human activity has contributed to this, they have questioned some predictions and caution that mandatory limits on carbon dioxide could damage the nation's economy.

In 2002, NOAA agreed to draft a report with Australian researchers aimed at helping reef managers deal with widespread coral bleaching that stems from higher sea temperatures. A March 2004 draft report had several references to global warming, including "Mass bleaching . . . affects reefs at regional to global scales, and has incontrovertibly linked to increases in sea temperature associated with global change."

A later version, dated July 2005, drops those references and several others mentioning climate change. NOAA has yet to release the coral bleaching report. James Mahoney, assistant secretary of commerce for oceans and atmosphere, said he decided in late 2004 to delay the report because "its scientific basis was so inadequate." Now that it is revised, he said, he is waiting for the Australian Great Barrier Reef Marine Park Authority to approve it. "I just did not think it was ready for prime time," Mahoney said. "It was not just about climate change—there were a lot of things."

On other occasions, Mahoney and other NOAA officials have told researchers not to give their opinions on policy matters. Konrad Steffen directs the Cooperative Institute for Research in Environmental Sciences at the University of Colorado at Boulder, a joint NOAA-university institute with a $40 million annual budget. Steffen studies the Greenland ice sheet, and when his work was cited last spring in a major international report on climate change in the Arctic, he and another NOAA lab director from Alaska received a call from Mahoney in which he told them not to give reporters their opinions on global warming.

Steffen said he told him that although Mahoney has considerable leverage as "the person in command for all research money in NOAA . . . I was not backing down."

Mahoney said he had "no recollection" of the conversation, which took place in a conference call. "It's virtually inconceivable that I would have called him about this," Mahoney said, though he added: "For those who are gov-

ernment employees, our position is they should not typically render a policy view."

The need for clearance from Washington, several NOAA scientists said, amounts to a "pocket veto" allowing administration officials to block interviews by not giving permission in time for journalists' deadlines. Ronald Stouffer, a climate research scientist at NOAA's Geophysical Fluid Dynamics Laboratory in Princeton, estimated his media requests have dropped in half because it took so long to get clearance to talk from NOAA headquarters. Thomas Delworth, one of Stouffer's colleagues, said the policy means Americans have only "a partial sense" of what government scientists have learned about climate change.

"American taxpayers are paying the bill, and they have a right to know what we're doing," he said. Reported in: *San Francisco Chronicle*, April 16. □

(NSA . . . from page 178)

potential abuse of the records. Only the data analysis facet of the program survived and became the basis for the warrantless surveillance program.

The decision, which one official attributed to "turf protection and empire building," has undermined the agency's ability to zero in on potential threats, sources said. In the aftermath of revelations about the agency's wide gathering of U.S. phone records, they added, ThinThread could have provided a simple solution to privacy concerns.

A number of independent studies, including a classified 2004 report from the Pentagon's inspector-general, in addition to the successful pilot tests, found that the program provided "superior processing, filtering and protection of U.S. citizens, and discovery of important and previously unknown targets," said an intelligence official familiar with the program. The Pentagon report concluded that ThinThread's ability to sort through data in 2001 was far superior to that of another NSA system in place in 2004, and that the program should be launched and enhanced.

While the furor over warrantless surveillance, particularly the collection of domestic phone records, has raised questions about the legality of the program, there has been little or no discussion about how it might be altered to eliminate such concerns.

ThinThread was designed to address two key challenges: The NSA had more information than it could digest, and, increasingly, its targets were in contact with people in the United States whose calls the agency was prohibited from monitoring. With the explosion of digital communications, especially phone calls over the Internet and the use of devices such as BlackBerries, the NSA was struggling to sort key nuggets of information from the huge volume of data it took in.

By 1999, as some NSA officials grew increasingly concerned about millennium-related security, ThinThread seemed in position to become an important tool with which the NSA could prevent terrorist attacks. But it was never launched. Neither was it put into effect after the attacks in 2001. Despite its success in tests, ThinThread's information-sorting system was viewed by some in the agency as a competitor to Trailblazer, a $1.2 billion program that was being developed with similar goals. The NSA was committed to Trailblazer, which later ran into trouble and has been essentially abandoned.

Both programs aimed to better sort through the sea of data to find key tips to the next terrorist attack, but Trailblazer had more political support internally because it was initiated by Hayden when he first arrived at the NSA, sources said.

NSA managers did not want to adopt the data-sifting component of ThinThread out of fear that the Trailblazer program would be outperformed and "humiliated," an intelligence official said. Without ThinThread's data-sifting assets, the warrantless surveillance program was left with a sub-par tool for sniffing out information, and that has diminished the quality of its analysis, according to intelligence officials.

Sources say the NSA's existing system for data-sorting has produced a database clogged with corrupted and useless information. The mass collection of relatively unsorted data, combined with system flaws that sources say erroneously flag people as suspect, has produced numerous false leads, draining analyst resources, according to two intelligence officials. FBI agents have complained in published reports in the *New York Times* that NSA leads have resulted in numerous dead ends.

The privacy protections offered by ThinThread were also abandoned in the post-September 11 push by the president for a faster response to terrorism. Once President Bush gave the go-ahead for the NSA to secretly gather and analyze domestic phone records—an authorization that carried no stipulations about identity protection—agency officials regarded the encryption as an unnecessary step and rejected it, according to two intelligence officials knowledgeable about ThinThread and the warrantless surveillance programs.

The NSA's new legal analysis was based on the commander in chief's powers during war, said former officials familiar with the program. The Bush administration's defense has rested largely on that argument since the warrantless surveillance program became public in December. The strength of ThinThread's approach is that by encrypting information on Americans, it is legal regardless of whether the country is at war, according to one intelligence official. Reported in: *Baltimore Sun*, May 18. □

intellectual freedom bibliography

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

Dalima, Shikkha. "Searching for Alex Kozinski." *Reason.* Vol. 38, no. 3, July 2006, p. 40.

Dibbell, Julian. "Turf Wars: Wikipedia Spars with a Splinter Site for Truth." *The Village Voice.* Vol. LI, no. 18, May 3–9, 2006, p. 26.

Dowling-Sendor, Benjamin. "A Matter of Relevance." *The American School Board Journal.* Vol. 193, no. 5, May 2006, p. 46.

Gomez-Pena, Guillermo. "Disclaimer." *In These Times.* Vol. 30, no. 5, May 2006, p. 47.

Hentoff, Nat. "Why We're Americans." *The Village Voice.* Vol. LI, no. 17, April 27–May 7, 2006, p. 24.

Sanchez, Julian. "Hustler on the Hill." *Reason.* Vol. 38, no. 3, June 2006, p. 14.

_____. "Regulating Bloggers." *Reason.* Vol. 38, no. 3, June 2006, p. 12.

_____. "Stripping Cable." *Reason.* Vol. 38, no. 3, June 2006, p. 14.

Stuntz, William. "Secret Service." *The New Republic.* Vol. 234, issue 4,761, April 17, 2006, p. 12.

"Top 10 Books Liberals Would Like to Burn." *Human Events.* Vol. 62, no. 18, May 22, 2006, p. 10.

Trotter, Andrew. "U.S. Court Backs School's Decision to Bar Student's Anti-Gay T-Shirt." *Education Week.* Vol. 25, no. 34, May 3, 2006, p. 9.

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